INDEX.

A.

ABBREVIATIONS; See Practice, civil—Pleading, 6.
ACKNOWLEDGMENT; See Conveyances, 2, 3; Sheriffs' sales, 2, 3.
ADMINISTRATION.

1. *Administrator—Note given by, under mistake as to amount of assets.*—Certain unauthorized executions had been issued from the Probate Court on behalf of the creditors of an estate, against the individual property of an administrator, for sums claimed to be due them by him as administrator. Under the pressure of threatened levy, and under a mutual misapprehension as to the extent and value of the assets in his hands, the administrator gave his individual notes for specified sums, payable partly in cash, and partly on time. No abatement in the amount of the claims was made, and no compromise effected further than the granting of an extension of time. In consideration of the notes, the creditors surrendered and receipted for their claims. It afterwards transpired that the amount of assets in his hands had been miscalculated and over-estimated in the Probate Court, and the amount charged against him was reduced accordingly by order of court. Suit having been brought against him upon the notes. *Held*, that the administrator might properly show in defense, that the notes were given under a mistaken impression of the extent of means in his hands; and, that in point of fact, there were no trust assets to which plaintiff had a right to look for payment. And *semble*, that defendant might have no claim to the interposition of equity, because of his own negligence, except for the fact that the levies on his own property placed him under duress.—Smith v. Paris, 274.

   [The above case is not one hinging on a compromise of contested claims between parties, where the law or the facts are uncertain.]

2. *Administrator's deed—Clerical errors may be corrected.*—An administrator's deed, which contains all the recitals as to notice, appraisement, sale, etc., required by the statute, (W. S., 98, §§ 35, 37) but sets out certain dates which are irreconcilable, may be explained and corrected by the introduction of the appraisement, report of sale and other like original papers. Such errors are merely clerical, and may be corrected by extrinsic evidence.—Moore v. Wingate, 398.

3. *Administration—Appraisers, oaths of.*—An appraisement of property for the purpose of administrator's sale, sworn to by two out of three appraisers, is a sufficient compliance with the law. (W. S., 887, § 6.)—*Id.*

4. *Administrator—Appraisement—Jurat, etc.*—An administrator's sale is not rendered void by reason of the fact that the person taking the affidavit of the appraisers subscribes himself as administrator.—*Id.*

5. *Administrators, suits by—Personal judgments—Contracts by administrators and their sureties—Sess. Acts 1865–6, p. 85—Probate Court, jurisdiction of.*—A. as administrator of B. sued C., the administrator of D., and the sureties on his official bond, for breach of a contract entered into by the defendants. The case was dismissed and judgment rendered against A. personally for costs. *Held*, that this case was not embraced under Sess. Acts 1865–6, p. 85, giving Probate Courts exclusive jurisdiction to hear and determine all suits and other proceedings instituted "against executors and administrators, upon any demand against the estate of their testator or intestate," and that a personal judgment against A. was not proper, inasmuch as he sued in his representative capacity.—State to use v. Maulsby, 500

ADMISSIONS; See Evidence, 1.

ADVERSE POSSESSION; See Limitations, 1, 2.

AGENCY; See Contracts, 1; Mechanics' Liens, 1.

AMENDMENTS; See Practice, civil—Pleading, 5.

APPEARANCE; See Justices' courts, 4.

ARGUMENT OF COUNSEL; See Practice, civil—Trial, 11, 12.

ASSAULT AND BATTERY; See Practice, criminal, 11.

ASSUMPSIT; See Sheriffs' Sales, 4.

ATTACHMENT.

1. *Jeofails, Statute of—Practice, civil—Pleadings—Allegations—Attachment bond.*—A petition on an attachment bond, which does not allege that the State sues, but sets forth by sufficient averments the title of B., for whose benefit the bond was made, and who is the real party in interest, and all the acts entitling him to recover, must be held good after verdict.—State v. Webster 135.

2. *Justices' Courts—Pleadings—Attachment—Plea in abatement—Inaccuracy.*—In a suit by attachment before a justice, the plea in abatement put the truth of the grounds for attachment, as alleged by plaintiff, in issue on the day of the making of the plea instead of on the day the affidavit for an attachment was made. *Held*, this was an inaccuracy committed by the justice, and might have been corrected by motion at the proper time, and is no ground for interference by this court.—Hamblin v. Dunn, 137.

3. *Attachment, suits by—Courts—When jurisdiction acquired.*—In attachment causes, the jurisdiction over any given subject matter is obtained by a levy thereon of a writ properly issued. [Hardin v. Lee, 51 Mo., 241, affirmed.]—Freeman v. Thompson, 183.

4. *Attachment—Delivery bond—Possession of property.*—The obligation entered into in a forthcoming bond given by defendant in an attachment suit to deliver the property attached according to the orders of the court, is sufficient presumptive evidence, without further proof, that the property was "found in his possession," as contemplated by the statute. (W. S., 188, § 24.) Such a bond will warrant summary proceedings by motion against the obligee and his sureties.—Hoshaw v. Gullett, 208.

5. *Attachment—Plea in abatement—Trial on the merits.*—In suit began by attachment, verdict for defendant on the plea in abatement, does not deprive the court of its jurisdiction to proceed with the case upon the merits (W. S., 189, § 42,) where defendant is a resident of the county, and in the absence of evidence to the contrary, such fact will be presumed in favor of the judgment.—Brackett v. Brackett, 265.

6. *Attachment—Bond—Non-suit—New bond, etc.*—An attachment bond executed by A. principal, *per* B. surety, duly approved by the Clerk of the Court, is not an absolute nullity, such as will warrant a dismissal of the suit where plaintiff offers to substitute a good and perfect bond in its place.—McDonald & Co., v. Fist & Co., 343.

7. *Attachment—Release of property—Judgment in attachment—Limitations, etc.*—The cause of action against a sheriff, for losses sustained by his unauthorized release of attached property pending the trial of the attachment proceedings, does not accrue from the date of the release but from that of the judgment in the attachment suit. The three years limitation commences running in his favor from that time.—Lesem, v. Neal, 412.

See Landlord and Tenant, 3.

BAILMENT.

1. *Bailment—Deposit with inn-keeper—What care required.*—An inn-keeper who gratuitously receives a deposit of valuables, is only responsible in case of their loss for gross negligence; *i. e.* for that omission of care which even the most inattentive and thoughtless never fail to take of their own concerns.—Wiser v. Chesley, 547.

BAILMENT, continued.

2. *Bailment—Deposit—Liability—Onus.*—A depositor makes out a *prima facie* case when he shows a deposit made, and a demand for and refusal of the thing deposited. The *onus* is then upon the depositary to exonerate himself from the liability which attached when he assumed the custody of the article.—*Id.*,

B.

BIGAMY; See Practice, Criminal, 5.

BILLS AND NOTES.

1. *Bills and Notes—Orders—Acceptance, conditional—Contract pending.*—The acceptance of an order for money, stated therein to be against sums due on a pending contract, is a conditional acceptance, and a subsequent breach of the contract by the drawer may be a good defense to a suit on such acceptance.—Crowell v. Plant, 145.

2. *Bills and Notes—Bonds—Parol testimony—Principals—Sureties.*—Parol testimony is admissible to prove who are principals and who are sureties to notes or bonds in actions at law.—Mechanics' Bank v. Wright, 153.

3. *Presumptions—Payments—Separate credits—Joint debts.*—A. was indebted to B. on a note made by himself and others, and after the maturity of said note, he rendered services for B., who at settlement, paid A. some money. *Held*, that in a suit on said note by B., there was no presumption that A. had paid it.—*Id.*

4. *Equity—Note, judgment procured on by fraud—Sale and purchase under, effect of.*—Where the maker of a note, given for the purchase money of land, suffered the holder to procure judgment thereon, upon the strength of assurances from the latter, that he intended to procure judgment merely to secure the debt, and that the judgment should be held in abeyance, and the holder afterward, without the knowledge or consent of the maker, caused the land to be sold under the judgment, and bought it in; *held*, that the maker of the note might resort to equity to have the sale set aside on payment of the note, and other proper relief administered. A title so obtained could stand only as security for the reimbursement of the debt.—Wright v. Barr, 340.

5. *Notes, suit upon—Loss pending action—Subsequent proceedings.*—Where in suit before a justice upon a note, the instrument was filed, but lost before the trial, plaintiff is not compelled after the loss to proceed as indicated by the statute where suit is brought upon a lost note. (W. S., 813, 814, §§ 9, 10.)—German Savings Bank v. Kerlin and Marks, 382.

6. *Bills of exchange and promissory notes—Time of payment fixed—Days of grace—Statute, construction of.*—Bills of exchange and promissory notes, payable at a day certain, are entitled to three days of grace. (W. S., 216, § 17; 217, § 18.)—Turk v. Stahl, 437.

7. *Bills and notes—Surety—Agreement as to co-surety—Liability of surety, etc.*—Where one becomes surety on a non-negotiable promissory note on the express condition that another shall be procured as co-surety, and the latter fails to join, the surety will not be liable, although the note is in the hands of a holder having no notice of the agreement. As to the surety, while the condition remains unperformed, the instrument is merely an escrow and there is no delivery.—Ayres v. Milroy, 516.

8. *Bills and notes—Surety—Agreement to obtain co-surety—Notice—Maker, agent of surety.*—Although a surety upon a note is induced to sign upon the promise of the maker that a co-surety shall be joined, yet if nothing on the face of the paper imparts notice to the holder or puts him on inquiry as to such agreement, no fault attaches to the latter, and the surety must run the risk of the fraud of his own agent. PER NAPTON, J., SHERWOOD, J., CONCURRING.—*Id.*

BILLS AND NOTES, continued.

9. *Notary public—Notice to indorser—Due diligence, what amounts to.*—A notary public not knowing the residence of an indorser, on the day of protest made inquiry at the bank in St. Louis, where the note was payable, and at the place of business of another indorser, and examined the City Directory to ascertain the residence, but without success. He thereupon placed the notice in the city post office. The evidence showed, that other indorsers could have given the desired information, and that one of them lived in East St. Louis, immediately across the river. *Held*, that it was the duty of the notary, to inquire at least of all the parties to the note, if accessible; and that he might have prosecuted his inquiries for that purpose for several days; that there was no search made, such as the law requires, and that putting the notice in the post office, under the circumstances, amounted to nothing.—Gilchrist v. Donnell, 591.

10. *Notice to indorser—Residence—Presumption as to service of notice must be made, how.*—There is no presumption, that an indorser resides in the town or city where the bill or note is made payable. If such be the fact, notice cannot be served by depositing it in the post office; but the service must be personal, or by leaving it at the usual place of business of the indorser, or with his family at his domicile.—*Id.*

See Husband and Wife, 3.

BOND—APPEAL; See Justices' Courts, 3.

BOND—ATTACHMENT; See Attachment.

BOND, INDEMNITY; See Replevin, 2.

BOND, RAILROAD; See Railroads.

BURDEN OF PROOF; See Bailment, 2; Practice, criminal, 9.

C.

CATTLE; See Railroads, 9.

CERTIORARI; See Court, Kansas City Common Pleas; Officers, 4.

CONDEMNATION; See Railroads, 3, 4, 5; Springfield, City of, 1, 2, 3.

CONFLICT OF LAWS; See Female Suffrage.

CONSTITUTION OF MISSOURI; See Female Suffrage, 1; Special Judges, 1; Statute, construction of, 9.

CONSTITUTION OF UNITED STATES; See Female Suffrage, 1.

CONTRACTS.

1. *Contracts—Subscription, suit upon—Agency—Qui facit, etc.*—A. subscription paper embodied the following clause: "The undersigned agree to pay to A. B., the sums set opposite our names as a 'bonus' to induce him to complete the Southern Hotel in such manner as may be determined by the directors of the company, and A. B." In suit by the assignee of the paper against a signer, for the amount of his subscription; *held* no defense to the suit, that A. B. by payment of a certain sum procured the work to be done by others.—Southern Hotel Co. v. Chouteau, 572.

See Bills and Notes; Forcible Entry and Detainer, 3, 4; Landlord and Tenant; Mechanics' Liens, 1; Partnership; Railroads, 7, 8.

CONVEYANCES.

1. *Conveyance—Land—Description of property—Repugnancy.*—Whenever material or permanent objects are embraced in the calls of a survey or deed, these have absolute control, and a call may be rejected for inconsistency, when description enough still remains to ascertain and describe the land with certainty.—Cooley, v. Warren, 166.

CONVEYANCES, continued.

2. *Deeds—Acknowledgment—Wife's fee—Relinquishment of dower.*—Where the only defect in a certificate of acknowledgment is, that it includes a clause relinquishing the wife's dower, the acknowledgment is sufficient to carry her fee in the land.—Miller v. Powell, 252.

3. *Acknowledgments—Officer de facto—Collateral proceedings.*—An acknowledgment taken before a *de facto* officer is good and sufficient in a collateral proceeding, although there may have been a defect in his commission.—Hamilton v. Pitcher, 334.

4. *Conveyance to A. and her children—Title of A.*—Where a conveyance was made to M. W. P. and her children, "and to their heirs and assigns forever," *held*, that she and her children *in esse* took as tenants in common, and that she and her husband had power to convey her interest by mortgage. The number of such children could be ascertained, and the maxim would apply. "*Id certum est, quod certum reddi potest.*"—*Id.*

5. *Deed—Execution of power—Intendment.*—If from the language of a deed it is plain either by a reference to the power or otherwise, that it was intended to be made in the execution of a power, it will make the execution valid and operative.—Turner v. Timberlake, 371.

6. *Will—Life estate—Power contained in—Deed—Execution of power.*—Where by the provisions of a will a life estate in certain land was conferred upon the wife with power to alienate the same during her life, her deed of the land embodying a copy of the will, and alleging that the deed is executed "in consideration of the provisions of the will" sufficiently shows the intention of the grantor to execute the power contained in the will.—*Id.*

7. *Notary's certificate—When need not express itself as under seal.*—Where an actual seal of office is affixed to a notary's certificate, it is not rendered invalid by the failure of the officer to declare either in the testimonium or in the body of the certificate that it was attested by his seal.—Clark v. Rynex, 380.

8. *Married women—Title—Equity, etc.*—The title of a married woman to real estate, can only be divested by proceedings in equity.—*Id.*

9. *Lands and land titles—Condition broken, entry, etc.*—Where the grantee in a conveyance performed no part of the condition or consideration without which the deed was not to vest title, no formal entry for condition broken would be necessary on the part of a grantor who had remained all the time on the land.—Moore v. Wingate, 398.

10. *Conveyances—Condition broken—Entry for transfer—Chancery—Proceedings in, when proper.*—The grantor in a deed made on condition, may, after entry for condition broken, transfer the estate to a third party; or he may convey where the estate was only to vest on the performance of a condition which remained unperformed. And the transferee in such case, having a plain remedy at law, must resort to ejectment to dispossess the grantee in the original deed, and cannot invoke the aid of Chancery, unless where defendant in maintaining his claim would be shown to be throwing a cloud on his title.—*Id.*

11. *Lands and land titles—Conveyances by parol.*—Since the adoption of the common law in this State, conveyances of land cannot be made simply by parol.—Chapman v. Templeton, 463.

See Administration, 2; Husband and Wife, 2, 4, 5, 7; Mortgages and Deeds of Trust; Sheriff's Sales, 1, 2, 3, 5, 6, 9.

CORPORATIONS; See Mechanics' Liens, 1; Municipal Corporations; Practice, civil—Trials, 15; Railroads, 1.

COSTS.

1. *Costs—Judgment for—Prevailing party.*—In a suit brought in equity by the mortgagor against the mortgagee, for proceeds charged to have been realized by defendant from a fraudulent sale of the property, where the court finds the facts to be as charged, and the money to be due plaintiff, but further ascer-

COSTS, continued.
tains that the same is less than the debt secured by the mortgage, and orders the sum found to be due plaintiff to be entered as a credit upon the mortgage debt. *Held*, that within the meaning of the statute, (W. S., 343, § 6,) plaintiff is the prevailing party, and the court properly enters judgment in his favor for costs.—Hawkins v. Nowland, 328.

See Jury, 1; Witnesses, 1.

COUNTER-CLAIM; See Practice, civil—Pleading.

COUNTIES.

1. *Statutes, construction of—Organization of counties into municipal townships Acts of March 18, 1872, and March 24, 1873.*—The act of March 24, 1873, was not designed to interrupt the continuity of the act of March 18, 1872, so as to avoid or annul proceedings under it. The act of 1873 must be construed as a continuation of the act of 1872, both relating to the organization of counties into municipal corporations, the former being designed to correct supposed defects in the latter.—State, *ex rel.* v. Vernon County, 128.
2. *Statutes, construction of—Repeal—Acts done under.*—Acts done under a law are not rendered nugatory by the repeal of that law. (W. S., 895, § 5.)—*Id.*

COURT, CAPE GIRARDEAU COMMON PLEAS.

1. *Cape Girardeau Court of Common Pleas, jurisdiction of—Equity.*—The Cape Girardeau Court of Common Pleas has jurisdiction of equitable actions (Sess. Acts, 1853, p. 81.)—Fulenwider v. Fulenwider, 439.
2. *Cape Girardeau Court of Common Pleas—Jurisdiction—Mechanics' liens—Statute, construction of.*—The Cape Girardeau Court of Common Pleas has jurisdiction of actions for the enforcement of mechanics' liens. [Sess. Acts 1853, p. 81, § 1.]—Roth v. Tiedeman, 489.

COURTS, CIRCUIT; See Records, 1.

COURT, KANSAS CITY COMMON PLEAS.

1. *Certiorari, writ of—Kansas City Court of Common Pleas.*—Since the act of 1859, (Sess. Acts 1859-60, p. 10,) the Clerk of the Kansas City Court of Common Pleas has had authority to issue the writ of *certiorari*.—Hopkins v. Seiger, 232.

COURT, LAFAYETTE COMMON PLEAS; See Justices' Courts, 2.

COURT, POLK COUNTY CIRCUIT.

1. *Statute, construction of—Circuit Court of Polk county—Change of terms—Return of writs.*—The act of Jan. 26, 1864, changing the time of holding the Polk Circuit Court, did not require the writs already issued to be returned for correction as to the time of holding court, but made such writs returnable by force of the law to the substituted terms of court.—Freeman v. Thompson, 183.

COURT, PROBATE; See Administration.

COURT, SUPREME; See Practice, Supreme Court; *Quo Warranto*, 1, 3.

CRIMES AND PUNISHMENTS.

1. *Crimes and punishments—Rape—Passive policy—Half-way measures.*—The crime of rape can only be committed where there is on the part of her on whom the attempt is made, the utmost reluctance, and the utmost resistance. A passive course of conduct, or slight resistance is not sufficient, there must be no consent, however reluctant.—State v. Burgdorf, 65.
2. *Offenses—Association with thieves, aiding and abetting—Individual morality—Public protection.*—An individual may associate with thieves, &c., without being guilty of any offense, for it is not the business of the legislature to keep guard over individual morality; but if such person so associates with a design to aid, abet or promote, or in any way assist, the parties charged with, or suspected of, being thieves, prohibitory legislation may be applied, not to correct the evil consequences which such association may bring on the individual, but to protect society from actual or anticipated breaches of law.—City of St. Louis v. Fitz 582.

CRIMES AND PUNISHMENTS, continued.

3. *Ordinances—St. Louis, City of—Associating with thieves—Validity of.*—The ordinance of the city of St. Louis, (City Ord., Chap. 20, Art. 4, § 1,) prohibiting the "knowingly associating with persons having the reputation of being thieves and prostitutes," is void as invading the right of personal liberty. PER SHERWOOD, JUDGE, CONCURRING.—*Id.*

See Practice, criminal.

CRIMINAL LAW; See Crimes and Punishments; Practice, criminal.

CROPS; See Forcible Entry and Detainer, 3, 4; Landlord and Tenant, 2.

CURATORS; See Guardian and Ward.

D.

DAMAGES.

1. *Damages—Personal injuries—Negligence—Owner of land—Liability of.*—The owner or occupant of real property is bound, so far as he may be able to do so by the exercise of ordinary care, to keep it in such condition that it will not, by any insufficiency for the purpose to which it is put, injure any passer-by; and he is bound also to use care and diligence to keep the premises in a safe condition for the access of persons who come thereon by his invitation express or implied for the transaction of business. But he is not bound to make the land or buildings thereon, safe for any purpose which is unlawful or improper, or for which he could not reasonably anticipate that they would be used, or for which they obviously were never designed. A mere passive acquiescence on the part of the owner or occupant in the use of real property by others, does not involve him in any liability to them for its unfitness for such use. No duty is imposed upon the owner or occupant, to keep his premises in a suitable condition for those who come there solely for their own convenience or pleasure, and who are not either expressly invited to enter, or induced to come upon them by the use for which the premises are appropriated and occupied, or by some preparatory adaptation of the place for use by customers or passengers, which might naturally and reasonably lead them to suppose that they might properly and safely enter.—Straub v. Soderer, 38.

2. *Damages—Streets, repair of—Negligence.*—Municipal corporations are bound to keep their streets in a reasonably safe condition. Failing to do so, they will be liable for all injuries resulting from their negligence.—Bassett v. City of St. Joseph, 290.

3. *Damages—Streets—Excavations bordering on—Liabilities of cities for damages, etc.*—The liability of municipalities for damages caused by excavations is not restricted to cases where they actually extend into the street; if travel is thereby rendered dangerous, the authorities are equally bound to protect the public, whether they encroach on the highway or not. And the city is bound for damages resulting from neglect of proper precautions, even though the excavations were not made by its own agents, provided, it had received due notice of the existing facts.—*Id.*

4. *Cities—Excavations—Dangerous condition of streets—Neglect of city to repair—Contributory negligence—Kick of a mule, etc.*—In a suit against a city to recover damages for injuries caused by plaintiff's falling into an excavation adjacent to a market place, where it appeared that the authorities were notified of the dangerous condition of the thoroughfare, and took no steps to guard the public from accident, and the evidence showed that plaintiff at the time of the casualty, was exercising ordinary care and prudence, plaintiff would be entitled to recover, although it further appeared, that the primary cause contributing to the injury was the attempt of a mule to kick plaintiff, and that in avoiding this peril, he fell or jumped into the excavation.—*Id.*

5. *Cities—Streets to be kept in repair to what extent—Streets opened.*—City authorities are only bound to keep such streets, and such parts of streets in repair, as are necessary for their convenience and use of the traveling public. When a street is opened for use, it should be put in a reasonably safe condition.—*Id*

DAMAGES, continued.

6. *Damages—Cities—Excavations unlawfully extending into streets—Variance.*—In a suit against a municipal corporation for damages caused by plaintiff's falling into a cellar adjacent to a public street, where the petition charged, that the excavation was unlawfully permitted to extend into the street; but the evidence showed, that it was not unlawful *per se*, but became unlawful only in event that it was unlawfully permitted to remain without protection; *held*, that the petition was good after verdict, notwithstanding such variance.—*Id.*

7. *Damages—Railroads, negligence of—Fire kindled from locomotive—Presumption—Speculative damages.*—Where grass is set burning by fire escaping from a locomotive, and the owner sues the company, negligence on the part of defendant will be presumed from the escape of the fire, and it devolves upon it, in order to rebut this presumption, to show that proper and safe locomotives and engines were used, and were conducted by the servants of the company in a proper and safe way. In such case the damages claimed would not be held too remote or speculative, although the property consumed was separated from the track by a strip of ground forty or fifty yards wide, where the plat was covered with dry grass and other combustible matter.—Clemens v. H. & St. J. R. R. Co., 366.

8. *Damages, remote or proximate—Issue as to, how disposed of—Instructions.*—Where doubt arises as to whether damages are proximate, or speculative and remote, the issue should be presented to the jury by proper instructions.—*Id.*

9. *Damages—Railroads—Contributory negligence—Allegations as to.*—In a suit for damages against a railroad company the petition need not allege, that plaintiff was at the time exercising due care, and not guilty of negligence contributing to the injuries received.—Loyd v. H. & St. J. R. R. Co., 509.

10. *Damages—Railroads—Jumping from train while in motion.*—In a suit against a railroad company to recover damages for injuries sustained by plaintiff in getting from the platform of the car upon that of the depot, the evidence showed, that the train stopped at the station only a minute; that during that time plaintiff's little child alighted; that plaintiff followed without delay, but after the train was in motion, and received her injuries in consequence of jumping from the train. *Held*, that plaintiff would not be barred of recovery by the fact, that she jumped from the train while in motion.—*Id.*

11. *Damages—Excessive—Remittitur, etc.*—Where the sum recovered as damages was reduced by remittitur to an amount satisfactory to the Judge who tried the cause, this court will not interfere.—*Id.*

12. *Damages, suit for—Surgeons called in to ascertain extent of injuries.*—The proposal of counsel in a damage suit, to have surgeons called in during the progress of the trial to examine plaintiff as to the extent of his injuries, is unknown to the law, and the court has no power to enforce such an order. *Id.*

See Landlord and T. 3; Municipal Corporations, 6, 7; Railroads, 7, 8, 9, 10.

DEPOSITIONS; See Practice, civil—Trials, 9.

DESCRIPTION; See Conveyances, 1; Sheriffs' Sales, 5, 6.

DISTURBING RELIGIOUS WORSHIP; See Practice, criminal, 17.

DIVORCE.

1. *Divorce—Judgment—Entries nunc pro tunc.*—Section 10 of the statute touching Divorces (W. S., 535) does not prevent *nunc pro tunc* entries, at a subsequent term, of the actual judgment or order that was made in the case but incorrectly entered on the records.—Moster v. Moster, 326.

2. *Practice, civil—Actions in rem—Divorce.*—A divorce suit is a suit *in rem*, and the *res* is the status of the plaintiff in relation to the defendant.—Ellison v. Martin, 575.

3. *Practice, civil—Publication—Non-Appearance—Divorce—Judgment in rem—Query.*—Whether in a divorce suit by publication, not followed by appearance, property can be brought before the court by describing it in the petition, and demanding a judgment *in rem* for alimony?—*Id.*

DOLLAR SIGN; See Practice, civil—Pleading, 6.

E.

EJECTMENT.

1. *Ejectment—Matters dehors the record not to be inquired into.*—Matters not appearing on the face of the record cannot be inquired into collaterally in suit of ejectment.—Hardin v. McCanse, 255.

2. *Execution—Death of one defendant in—Issue of against survivor, effect of.*—In ejectment brought by the purchaser at execution sale, his title would not under the Statutes of 1855, (p. 741, § 20 and p. 905, § 18,) be defeated by the fact that one of the parties, against whom the execution issued, had died between the date of the judgment and that of the execution, where it appeared that the property levied on and sold was that of the survivor. Under that statute the execution although irregular would not be void.—*Id.*

3. *Ejectment—Possession—Title in wife.*—In order to show himself entitled to possession of land, party may prove title in his wife.—Bledsoe v. Simms, 305.

4. *Husband and wife—Her lands—Ejectment against—Who defendant.*—The husband is entitled to the possession of the wife's fee simple lands, and he is the proper and only party to be made defendant in a suit for lands claimed to belong to her.—*Id.*

5. *Ejectment—Prior possession short of statutory bar, will prevail when.*—In actions of ejectment, where no title appears on either side, the prior possession of plaintiff, though short of the statutory bar, will prevail over a subsequent possession of defendant, which has not ripened into a title, provided, that the prior possession be under claim of right, and not voluntarily abandoned. In such a case it must appear that the defendant is a mere trespasser; and that he or those under whom he claims, or from whom he obtained possession, entered upon the actual or constructive possession of the plaintiff.—*Id.*

See Sheriffs' Sales, 6.

ELECTIONS.

1. *Election—Ballots, not numbered cannot be counted—Const. of Stat.*—The provision of the statute concerning Elections (W. S., 566-67), that all ballots cast shall be numbered, and that ballots not numbered shall not be counted, is not merely directory but mandatory. And an officer, elected by votes not numbered as required by that statute, will, on contest raising that issue, be held to have forfeited his election.—West v. Ross, 350.

See Officers, 5, 6, 7.

EQUITY.

1. *Equity—Mortgage—Misdescription of land—Sale—Bill by purchaser to correct the description in the mortgage.*—A purchaser under a mortgage cannot come into equity, requesting that other property, in the place of that sold and purchased, be subjected to his purchase on the ground, that by mistake the mortgage covered different property from that intended.—Schwickerath v. Cooksey, 75.

2. *Equity—Mortgage—Misdescription of land—Sale—Bill by purchaser to correct the description in the mortgage—Privies.*—Equity will entertain a bill by a purchaser under a mortgage, requesting that other property, in the place of that sold and purchased, be subjected to his purchase, on the ground, that by mistake the mortgage covered different property from that intended,—as between the original parties and their privies. PER ADAMS, JUDGE, dissenting,—NAPTON, JUDGE, concurring.—*Id.*

3. *Equity—Note, judgment procured on by fraud—Sale and purchase under, effect of.*—Where the maker of a note, given for the purchase money of land, suffered the holder to procure judgment thereon, upon the strength of assurances from the latter that he intended to procure judgment merely to secure the debt, and that the judgment should be held in abeyance, and the holder afterwards, without the knowledge or consent of the maker, caused the land to be sold under the judgment, and bought it in; *held*, that the maker of the

EQUITY, continued.

note might resort to equity to have the sale set aside on payment of the note, and other proper relief administered. A title so obtained could stand only as security for the reimbursement of the debt.—Wright v. Barr, 340.

See Conveyances, 8, 10; Judgments, 2; Mortgages and Deeds of Trust; Practice, civil—Trials, 8.

ERROR, WRIT OF; See Practice, civil—Appeal.

ESTOPPEL.

1. *Estoppel—Privies.*—Privies in blood, in estate, or in law, are estopped from litigating that which is conclusive upon him with whom they are in privity.—Cooley v. Warren, 166.

See Trusts and Trustees, 1.

EVIDENCE.

1. *Evidence—Admissions of deceased persons as to resulting trusts.*—Testimony as to verbal admissions of persons, since dead, is to be received with great caution, and whenever it is attempted to prove resulting trusts by virtue of such admissions, the testimony must be clear, strong and unequivocal, and leave no room for doubt in the mind of the chancellor, as to the existence of such a trust. And the admissions should be supported by other circumstances going also to show the existence of the trust.—Ringo v. Richardson, 385.

See Attachments, 4; Bailment, 2; Husband and Wife, 1, 6, 7; Practice, civil—Trials, 7, 9, 10; Practice, criminal, 9, 10; Sheriff's Sales, 2, 3, 5, 6; Swamp lands, 1, 2; Wills, 2, 3; Witnesses, 2.

EXCEPTIONS; See Practice, civil—Appeal; Practice, criminal, 13.

EXECUTION.

1. *Execution—What estate vendible under—Purchase—Possession—Specific performance.*—The purchaser of land, who has paid the purchase money and taken possession, has an estate therein which is vendible on execution, notwithstanding the fact that by mistake the deed described other land. And the purchaser at the execution sale will succeed to all the rights which the judgment debtor had, to sue the original grantor for specific performance or reformation.—Morgan v. Bouse, 219.

2. *Execution—Death of one defendant in—Issue of, against survivor, effect of.*—In ejectment brought by the purchaser at execution sale, his title would not, under the Statutes of 1855, (p. 741, § 20 and p. 905, § 18,) be defeated by the fact that one of the parties, against whom the execution issued, had died between the date of the judgment and that of the execution, where it appeared that the property levied on and sold was that of the survivor. Under that statute the execution, although irregular, would not be void.—Hardin v. McCanse, 255.

See Garnishment, 1; Judgment, 1; Land and Land Titles, 1, 2; Sheriffs' Sales, 1.

F.

FEMALE SUFFRAGE.

1. *Laws, conflict of—Constitution of Missouri—Registration laws—Constitution of the United States—14th Amendment.*—There is no conflict between the Constitution of the State and the registration laws, restricting the right of voting to male citizens, and the Fourteenth Amendment to the Constitution of the United States.—Minor v. Happersett, 58.

FIXTURES; See Mechanics' Liens, 3.

FORCIBLE ENTRY AND DETAINER.

1. *Forcible entry and detainer—Possession of defendant—Demand, etc.*—To sustain an action for forcible entry and detainer, defendant must be in actual pos-

FORCIBLE ENTRY AND DETAINER, continued.
session of the premises, or a part thereof, at the institution of the suit. To sustain such action, no prior demand for the possession need be made.—DeGraw v. Prior, 313.

2. *Forcible entry and detainer—What possession necessary to maintain.*—To establish the possession necessary to maintain forcible entry and detainer, plaintiff need only show that he entered the premises with a view to holding possession, and that his purpose was lawful. A subsequent merely temporary absence will not deprive him of his right. He must be in actual possession; but may be so either in person or by his agent.—*Id.*

3. *Forcible entry and detainer—Landlord and tenant—Crops—Tenants in common.*—By written agreement A. leased, let and rented his land for three years to B., to be surrendered up by B. at the end of the term. A. was to furnish all the teams necessary, and the first year all the seeds and farming utensils, and for the rest of the time half the seeds, and B. for his care of the place, &c., was to have one-half of the products of the land. B. went away, leaving his agents in possession, and upon his return, during the continuance of the lease, A. prevented him from taking possession of the land. B. brought an action of forcible entry and detainer against A. *Held*, that by this agreement, B. was the tenant of A., and that they were tenants in common of the crops; that, there being no evidence of abandonment or surrender, B. was entitled to the possession of the land.—Johnson v. Hoffman, 504.

4. *Forcible entry and detainer—Recoupment.*—In an action of forcible entry and detainer, the defendant cannot set up a breach of the contract of letting by way of recoupment.—*Id.*

FRAUD; See Equity, 3; Frauds, Statute of.

FRAUDS, STATUTE OF.

1. *Frauds, statute of—Goods worth over $30—Contract of sale, when not admissible in evidence.*—A contract of sale of goods, worth over $30, is not admissible in evidence, unless the buyer accepted part of the goods sold, and actually received the same, or gave something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing be made of the bargain, and signed by the parties or their agents lawfully authorized. [W. S., 657, § 6]—Delventhal v. Jones, 460.

FRAUDULENT CONVEYANCES.

1. *Fraudulent Conveyances—Personal property—Mortgages—Sale, bill of—Possession.*—In an action for the recovery of specific personal property by A. against D., it appeared that C. mortgaged this property to A., which mortgage was acknowledged and recorded. C. made a bill of sale of the same property to B., which was only intended to be a mortgage. This bill of sale was made after the first mortgage, but before the mortgage was acknowledged or recorded. The bill of sale was not acknowledged. C. remained in possession of the goods, but some months afterwards, and after the mortgage was recorded, B. took possession and sold the property to D. *Held*, that A. was entitled to recover the property from D.—Balke v. Swift, 85.

G.

GARNISHMENT.

1. *Execution—Garnishment under—Interrogatories filed by plaintiff—Prior execution—Payments.*—Where plaintiff in an execution causes interrogatories to be filed and garnishees to be summoned, it is error for the court to order money, paid into court under those proceedings, to be turned over to the plaintiff on a prior execution against the same defendant; plaintiff in the first execution not having ordered interrogatories to be filed, or garnishees summoned. And *semble*, that no such steps can be taken on an execution by the sheriff without directions of plaintiff.—Pritchard v. Toole, 356.

GOVERNOR; See Officers, 2.

GRACE, DAYS OF; See Bills and Notes, 6.

GUARDIAN AND WARD.

1. *Curators—Statutes of 1855, construction of—New bond filed on order of the County Court—Liability of securities.*—Under the Revised Statutes of 1855, [825, § 18; 119, § 36; 120, §§ 39, 40, 41,] the giving of other or further security by a curator, as ordered by the County Court on its own motion, does not relieve the first bondsmen from any liability, but only operates as additional security; *semble*, that it would render both sets of securities equally liable as between themselves.—State v. Fields, 474.

H.

HABEAS CORPUS; See Officers, 3, 4.

HUSBAND AND WIFE.

1. *Husband and wife—Married women as witnesses—Construction of statute.*—Section 5 of the statute concerning Witnesses, (W. S., 1373) holding married women incompetent to testify as to admissions and conversations of their husbands, was intended to apply to all cases, whether the husband was a party or not.—Moore v. Wingate, 398.

2. *Husband and wife—Separate estate—What words create.*—Where by deed, or by decree of a court of equity, property is conveyed to a trustee "for the sole, separate and exclusive use, benefit and behoof" of certain parties, some of whom were unmarried females, such deed or decree creates a separate estate in such females, free from the control of any future husbands.—Metropolitan Bank v. Taylor, 444.

3. *Husband and wife—Separate estate—How charged.*—The separate estate of a married woman is liable for notes executed by her.—*Id.*

4. *Husband and wife—Separate estate—Deed, language of.*—In order to exclude the *jus mariti* in an estate conveyed to a woman, the expression in the deed of the intention to do this, must be clear and unequivocal. PER SHERWOOD, JUDGE, DISSENTING.—*Id.*

5. *Husband and wife—Separate estate—Deed, language of—Decree, reforming deed—Petition, uncontradicted allegations of.*—Property was conveyed to A. in trust for his wife B., and their children, C. D. and E., the said *cestuis que trust* were to have, hold and enjoy the same, with all the rights, improvements, &c., separate from said A., "their respective husband and father, as their sole, individual and exclusive property;" and the rents, profits and moneys accruing from the disposition of the property, or any part thereof, the said trustee was to pay over to the *cestuis que trust*, or their order. Afterwards a petition was filed to correct the deed, (B. was dead,) and give the trustee greater power of sale, which error in the deed was alleged to be the fault of the scrivener and to let in children subsequently born. The deed was corrected by the court. In the petition, whose allegations were not denied, C. and D. were alleged to have been under ten years of age, and E. only six months old, at the date of the deed. *Held*, that the deed, the decree, and the undenied allegations of the petition must be construed together, and that the husband of E. is not excluded from his marital rights in the interest of E. in this property.—*Id.*

6. *Witnesses—Competency of husband when joined with wife.*—Where husband and wife are joined as parties, the testimony of the husband is inadmissible. Sections 1 and 5 of the Witness Act (W. S., 1372-3) do not render him competent.—Paul v. Leavitt, 595.

7. *Married woman—Estate of—Deed vesting title in her—Separate estate, created how—Parol evidence as to deed.*—A deed to a married woman merely vesting in her a title in fee, but containing no provisions excluding the marital rights of the husband, will not create in her a separate estate which can be charged for her debts. And in suit for that purpose, testimony, showing, that the money of the wife paid for the lands; that the deeds were taken in her name

HUSBAND AND WIFE, continued
in consequence; that her husband always acted as her agent in buying and selling lands, etc., would be incompetent, as having the effect of varying the terms of the deed by parol testimony.—*Id.*

See Conveyances, 2, 8; Divorce; Ejectment, 3, 4.

I.

INFANTS; See Guardian and Ward.

INNKEEPER; See Bailment, 1.

INSANITY; See Practice, criminal, 9.

INSTRUCTIONS; See Damages, 8; Practice, civil—Trials; Practice, criminal, 10.

INSURANCE DEPARTMENT; See Insurance, Fire, 1.

INSURANCE, FIRE.

1. *Insurance companies—Action by superintendent—Statement by company—Averment as to penalty—Insurance act, § 43.*—In proceedings brought at the instance of the superintendent of insurance, against a fire and marine insurance company, for violating § 23, Art. III, of the insurance law, (W. S., 769,) where the petition uses the language of the statute in describing the statement required to be filed, and charges that said statement was not made and filed "as required by the law," such averment does not render the petition bad on motion in arrest. It is not incumbent on plaintiff to show what the statement is required to contain. The requirements of that statute will be judicially noticed. For failure to comply with § 23, plaintiff is entitled to the penalty of $500 named in § 43. (State v. Matthews, 44 Mo., 523.)—State v. Case, 246.

INTERPRETATION · See Practice civil—Trials, 10.

J.

JEOFAILS.

1. *Jeofails, statute of—Mechanic's lien—Date of furnishing supplies.*—In a suit on a mechanic's lien, the petition stated, that on a certain day, and within six months after furnishing the supplies, the plaintiff levied his lien, and the exhibit to the petition stated the dates and the items. *Held*, this was sufficient after verdict.—Jones v. Shaw, 68.

2. *Jeofails, Statute of—Practice, civil—Pleading—Allegation—Attachment bond.*—A petition on an attachment bond, which does not allege that the State sues, but sets forth by sufficient averments the title of B., for whose benefit the bond was made, and who is the real party in interest, and all the facts entitling him to recover, must be held good after verdict.—State to use v. Webster, 135.

3. *Jeofails, Statute of—Petition—Averments omitted—Verdict.*—When the necessary averments are omitted in the petition, such defect is not cured after verdict by the statute of amendments.—Town of Clinton v. Williams, 141.

4. *Jeofails, statute of—Judgment by default—Reversal—What errors cured.*—A judgment by default cannot be reversed, impaired, or in any way affected, by reason of the omission of any allegation or averment, which would have rendered the petition demurrable, nor for the omission of any allegation or averment, without proving which, the triers of the issue ought not to have given a verdict.—Robinson v. Mo. R. Construction Co., 435.

JUDGMENT.

1. *Judgment—Irregularity in—Execution—Motion to quash.*—Where a court has power to render judgment, any mere irregularity in the proceedings may be reached by appeal, or direct proceedings to vacate the judgment, but not by a motion to quash the execution.—Brackett v. Brackett, 265.

JUDGMENT, continued.

2. *Practice, civil—Judgment made final at return term on bill in chancery, may be set aside at next term, when.*—In counties where there are only forty thousand inhabitants, or the number is less, a judgment on a bill in chancery rendered for want of answer, and made final at the same time, may be set aside at a subsequent term; and the court may in the exercise of a sound discretion permit the defendant to plead over.—Dougherty v. St. Vincent's College, 579.

See Attachment, 7; Divorce, 1; Equity, 3; Jeofails, 4; Notice, 2, 3; Practice, civil, 1; Practice, civil—Appeal, 3, Practice, Supreme Court, 1, 10; Wills, 1.

JUDICIAL SALES; See Equity, 3.

JURISDICTION; See Administration, 5; Attachment, 3; Court, Cape Girardeau Common Pleas, 1, 2; Notice, 2, 3; Practice, criminal, 6; Quo Warranto, 1; Railroads, 9.

JURY.

1. *Juries—Board and lodging of—County, liability of.*—When a county is liable for the proper costs of a trial, it is liable for the board and lodging of the jury therein, provided by the sheriff in pursuance of the order of the court.—Watson v. Moniteau County, 133.

2. *Jury of six men—Waiver—Motion in arrest.*—Where a cause is tried by a jury of less than twelve men, unless the full panel be expressly waived by entry of record, that fact may be taken advantage of by motion in arrest. In such case no exceptions to the panel need be saved at the trial.—Cox and Slingsby v. Moss, 432.

JURY; See Officers, 4; Practice, civil—Trials, 11, 12, 13; Practice, criminal, 12; Springfield, City of, 2.

JUSTICES' COURTS.

1. *Justices' courts—Pleadings—Attachment—Plea in abatement—Inaccuracy.*—In a suit by attachment before a justice, the plea in abatement put the truth of the grounds for attachment, as alleged by plaintiff, in issue on the day of the making of the plea instead of on the day the affidavit for an attachment was made. *Held*, this was an inaccuracy committed by the justice, and might have been corrected by motion at the proper time, and is no ground for interference by this court.—Hamblin v. Dunn, 137.

2. *Justices' courts—Appeal—Lafayette County.*—Nothing in the acts relating to Lafayette Court of Common Pleas requires, that an appeal from a justice of that county should be taken to that court instead of the Lafayette Circuit Court, when the term of the former began soonest after the date of granting the appeal.—Smith v. Shore, 273.

3. *Justices' courts—Default—Appeal—Motion for new trial—Dismissal of judgment for costs.*—An appeal from a justice is properly dismissed, where appellant suffered default before the justice, and filed no motion to set the same side. A further judgment in such case in the Circuit Court, against the appellant and his sureties on the appeal bond for costs, is a nullity so far as the surety is concerned; but not such an error, as to reverse the judgment of dismissal.—Smith v. St. L., K. C. and N. R. R. Co., 338.

4. *Justices' courts—Voluntary appearance—Waiver of notice.*—The voluntary appearance of parties in a justice's court waives all defects in process, as e. g. notice of suit less than fifteen days before trial.—Griffin v. Van Meter, 430.

5. *Justices' courts—Cattle, damages to, by railroads—Jurisdiction.*—Justices of the peace have jurisdiction over suits against railroads for killing, maiming, &c. cattle, &c. in their respective townships, without regard to the value of the animals, or the amount of damages claimed. (W. S., 808, § 3.)—Hudson v. St. L., K. C. and N. R. R. Co., 525.

See Practice, civil—Trials, 15.

K.

KANSAS CITY; See Court, Kansas City, Common Pleas; Municipal Corporations, 7.

L.

LANDS AND LAND TITLES.

1. *Lands and Land Titles—Pre-emption Claims—Interest in Lands.*—A pre emption claim constitutes no interests in lands.—Bray v. Ragsdale, 170.

2. *Sheriffs' Sales—Pre-emption Claims.*—A pre-emption claim cannot be levied on and sold on execution.—*Id.*

See Conveyances, 3, 10; Ejectment; Execution, 1; Husband and Wife, 7; Limitations, 1, 2; Railroads, 3, 4, 5; Sheriffs' Sales, 5, 6; Swamp lands.

LAND COMMISSIONER; See Springfield, City of, 1, 2, 3.

LANDLORD AND TENANT.

1. *Lease—Attempts to rent to outsiders.*—An attempt by the lessor to rent premises to outside parties, where the lessees are in nowise thereby disturbed in their possession, does not *ipso facto* avoid the lease.—Mills v. Sampsel, 360.

2. *Landlord and tenant—Croppers on shares—Agreements.*—Where by agreement A. is to cultivate the land of B., and B. is to receive an agreed proportion of the crops, it is a question only determinable by the agreement in each case, whether the relation of landlord and tenant exists, or the parties are croppers on shares.—Johnson v. Hoffman, 504.

3. *Landlord and tenant—Attachment—Counter-claim for damages growing out of.*—In an action by attachment under the Landlord and Tenant Act for rent, defendant set up in defense an agreement of plaintiff to release him from all rent in arrear, if he would surrender possession before the expiration of his term; and to take care of what property he might leave on the place. *Held*, that defendant, having vacated the premises as agreed, might set up the contract in bar of plaintiff's claim for rent; but could not set up a counter-claim for damages caused by levy of the attachment upon his property remaining on the premises. His remedy for damages growing out of the attachment was by suit on the attachment bond.—Hembrock v. Stark, 588.

See Forcible Entry and Detainer.

LARCENY; See Practice, criminal, 1, 2, 3, 4.

LEASE; See Landlord and Tenant.

LIEN, MECHANIC'S; See Mechanics' Liens.

LIENS, VENDORS'; See Vendor's Lien.

LIMITATIONS.

1. *Limitations, statute of—Adverse possession of land—Payment of taxes.*—The continuous payment of taxes on land is not sufficient of itself to show adverse possession.—Chapman v. Templeton, 463.

2. *Limitations, statute of—Land, adverse possession of—Trespasser—Title, color of.*—A trespasser can acquire title, under the Statute of Limitations, only to so much land as he has the actual possession of; but one claiming under color of title, *bona fide* obtained, can acquire title to the whole tract, under the said statute, by possession of a part in the name of the whole.—*Id.*

3. *Limitations, statute of—Non-residents—Time when cause of action accrues.*—If, when the cause of action accrues, the party in default is a resident of another State, such non-residence does not prevent the running of the statute of limitations. (W. S., 919, § 16.) [Thomas vs. Black, 22 Mo., 330, affirmed.]—Scroggs v. Daugherty, 497.

See Attachment, 7.

LOST NOTE; See Bills and Notes, 5.

M.

MANDAMUS.

1. *Mandamus—Prayer—Facts alleged and established—Circuit Court.*—The Circuit Court may disregard the prayer in the petition for a mandamus, and conform its final order to the facts alleged and established.—Osage Valley and S. K. R. R. v. Morgan County, 156.

See Railroads, 6.

MECHANICS' LIENS.

1. *Mechanics' liens—Person contracting with President of Railroad Company an original contractor.*—A party furnishing material to a Railroad Company under a contract with its President is an "original contractor" within the meaning of the mechanic's lien law. In such case the contracts of the President are those of the company.—Hearne v. C. & B. R. R. Co., 324.

2. *Mechanics' liens—Account—Statement of, what insufficient.*—A statement, merely showing the balance due, is not a sufficient statement of the account within the meaning of the mechanic's lien act (W. S., 909, § 5,) to create a lien.—Graves v. Pierce, 423.

3. *Mechanics' liens—Machinery must be in nature of fixtures—Contract must be what—Carding machines.*—The machinery, upon which a mechanic's lien can attach, under a proper construction of the statute, (W. S., 907, § 1,) must be such as is used in the erection of a building, and which will, when placed in the building, erection or improvement, become a fixture and a part of the reality; or at least such as is necessary in the erection of the improvements. And the material must be furnished under a contract either with the owner or the contractor for the building. The lien will not attach on account of a carding machine.—*Id.*

See Court, Cape Girardeau, Common Pleas, 2; Jeofails, 1.

MISTAKE; See Sheriffs' Sales, 4.

MORTGAGES AND DEEDS OF TRUST.

1. *Equity—Mortgage—Misdescription of land—Sale—Bill by purchaser, to correct the description in the mortgage.*—A purchaser under a mortgage, cannot come into equity, requesting that other property, in the place of that sold and purchased, be subjected to his purchase on the ground that by mistake, the mortgage covered different property from that intended.—Schwickerath v. Cooksey, 75.

2. *Equity—Mortgage—Misdescription of land—Sale—Bill by purchaser to correct the description in the mortgage—Privies.*—Equity will entertain a bill by a purchaser under a mortgage, requesting that other property, in the place of that sold and purchased, be subjected to his purchase, on the ground that by mistake the mortgage covered different property from that intended,—as between the original parties and their privies. Per ADAMS and NAPTON, J. J., DISSENTING.—*Id.*

3. *Fraudulent conveyances—Personal property—Mortgages—Sale, bill of—Possession.*—In an action for the recovery of specific personal property by A. against D., it appeared that C. mortgaged this property to A., which mortgage was acknowledged and recorded. C. made a bill of sale of the same property to B., which was only intended to be a mortgage. This bill of sale was made after the first mortgage, but before the mortgage was acknowledged or recorded. The bill of sale was not acknowledged. C. remained in possession of the goods, but some months afterwards, and after the mortgage was recorded, B. took possession and sold the property to D. *Held*, that A. was entitled to recover the property from D.—Balke v. Swift, 85.

4. *Mortgages—Legal title—Forfeiture—Possession by mortgagee.*—A mortgage conveys the legal title, and after forfeiture, the mortgagee, or those holding under him by foreclosure or color of title, may enter into possession, and hold it against the mortgagor. [Jackson vs. Magruder, 51 Mo., 55, affirmed.]—Jones v. Mack, 147.

MORTGAGES AND DEEDS OF TRUST, continued.

5. *Mortgages—Mortgage, assignee of—Possession—Redemption—Ejectment.*—A purchaser at a mortgagee's sale, who has paid the money, is substituted to the rights of the mortgagee; and in case the foreclosure is not legally conclusive, he cannot be dispossessed by the mortgagor by action of ejectment, but the mortgagor can redeem the property.—*Id.*
6. *Mortgages—School funds—Court, county—Order of sale—Sheriff, sale by—Ejectment.*—A sale of lands, mortgaged for school funds loaned, made by the sheriff without the proper order from the County Court, is a complete nullity, and such title is no *legal* defense to the purchaser against an action of ejectment by the mortgagor. Per SHERWOOD and VORIES, J. J., DISSENTING.—*Id.*
7. *Mortgages—Satisfaction—Law—Equity.*—Though a mortgage may be satisfied at law, yet equity will treat it as satisfied or not, in accordance with what it deems will best subserve and promote the equities of the case.—*Id.*
8. *Mortgages—Redemption of incumbrances by subsequent owner—Payment of usurious sums, etc.*—The owner of land has his action in equity to redeem it from an incumbrance placed upon it by a prior owner, by paying the amount justly due thereon, deducting from the incumbrance whatever part thereof consists of usurious interest; but he can make no deduction for usurious interest already paid by the former owner.—Perrine v. Poulson, 309.
9. *Sheriff's deed under mortgage—Recital as to order of sale, etc.*—A sheriff's deed under foreclosure of mortgaged land, is not invalid for failing to state that the County Court granted the order of sale in a case where no other court had jurisdiction. And a recital in the deed, that the order was issued "at the June adjourned term," is sufficiently definite without naming the day of the term, where this fact might be ascertained from the records of the court.—Warner v. Sharp, 598.

MORTGAGES AND DEEDS OF TRUST; See Costs, 1; Trusts and Trustees.

MUNICIPAL CORPORATIONS.

1. *Municipal corporations—Special taxes—Streets—Re-paving—Assessment of benefits.*—The power to grade and improve streets is a legislative power, and is a continuing one, unless there is some special restraint imposed in the charter of the corporation. It may be exercised from time to time, as the wants of the municipal corporation may require, and of the necessity or expediency of its exercise, the governing body of the corporation, and not the courts, is the judge; and it follows that the power to compel the property owners to pave generally, extends to compelling them to re-pave when required by the municipal authorities. If the first paving of a street is a special benefit to the front proprietor justifying the imposition on him of a portion of the expense, so the removal of an insufficient pavement and the making of a new and sufficient one in its stead, is a matter of special benefit to the front proprietor, although it may be also of general utility.—McCormack v. Patchin, 33.
2. *Corporations, municipal—Streets, improvement of—Assessments—Personal judgments, validity of—Statutes authorizing.*—Personal judgments against the owner of property in a city, on account of assessments for improvements of streets, &c., are null and void, and statutes authorizing such judgments are unconstitutional and void. [City of St. Louis v. Clemens, 36 Mo., 467, and *Id.* 49 Mo., 552 overruled.]—City of St. Louis, to use, etc. v. Allen, 44.
3. *Practice, civil—Judgments—Interest—Assessments for street improvements in City of St. Louis.*—The 15 per cent. interest in suits on assessments for street improvements should be allowed to the time of the verdict, but the judgment rendered thereon should bear six per cent. interest.—*Id.*
4. *Municipal corporations—Railroads, power to subscribe to.*—It is too late now to question the power of municipal corporations to subscribe to railroad corporations.—O. V. & S. K. R. R. Co. v. County Court of Morgan county, 156.
5. *Municipal corporations—Fire department—Fires, losses by—Liability.*—A grant, by the Legislature to a city, of power to establish a fire department, confers a legislative or discretionary power, and does not render the city liable, if the power is exercised, for losses occurring through fires.—Heller v. The Mayor, &c., of Sedalia. 159.

MUNICIPAL CORPORATIONS, continued.

6. *Corporations, municipal—Streets—Changing grade—Damages—Liability.*—A city is not liable for the damages which may accrue to a property owner merely from a change in the grade of the streets.—Schattner v. The City of Kansas, 162.

7. *Kansas, City of—Charter—Establishment of grades of streets—Maps thereof—Change thereof—Liability to an individual.*—The charter of the city of Kansas required the City Council, as soon as practicable, to establish the grades of all the streets in the city, to prepare and exhibit to public view a map thereof, and thereafter only to change such grade after due public notice, etc. *Held*, that the City could not be held liable in damages at the suit of a private party for not obeying this provision of its charter.—*Id.*

8. *Ordinances—Fines, suits for—Particularity of statements.*—In proceedings to recover a fine for violation of a town or city ordinance, it is sufficient if the statements inform the defendant with reasonable certainty of what he is called upon to answer. The technical accuracy of an indictment is not required. Town of Memphis v. O'Connor, 468.

9. *Ordinances of towns—Fines, suits for—Statements therein.*—A suit to recover a fine for breach of an ordinance of a town organized under W. S., Ch. 124, is a civil action. A complaint on such a cause of action, whose only charge is, "that the defendant committed a certain offense contrary to an ordinance of the town," is bad, and suit must be dismissed upon motion.—*Id.*

See Damages, 2, 3, 4, 5, 6; Springfield, City of; Statute, construction of, 5.

MURDER; See Practice, criminal, 5.

N.

NEGLIGENCE; See Damages; Practice, civil—Trials, 16.

NEW TRIAL; Practice, civil—New Trials; Practice, criminal, 14, 15.

NON-RESIDENCE; See Limitations, 3.

NOTARY PUBLIC; See Bills and Notes, 9, 10; Conveyances, 7.

NOTICE.

1. *Practice, civil—Notice—Publication, order of—Sufficiency of.*—An order of publication, informing defendant that a suit had been commenced against him, founded on an account for the sum of $150, is a sufficient compliance with the statute.—Freeman v. Thompson, 183.

2. *Practice, civil—Publication—Non-appearance—General judgment.*—General judgments cannot be rendered against a defendant merely upon order of publication, and not followed by appearance of defendant.—Ellison, Sen. v. Martin, 575.

3. *Practice, civil—Publication—Non-Appearance—Divorce—Judgment in rem—Query.*—Whether in a divorce suit by publication, not followed by appearance, property can be brought before the court by describing it in the petition, and demanding a judgment *in rem* for alimony?—*Id.*

O.

OFFICERS.

1. *Quo Warranto—Information—Attorney General—Private Person—Supreme Court—Jurisdiction.*—This court has jurisdiction of informations in the nature of *quo warranto*, whether filed by the Attorney General, or by a private person; though, where other tribunals have been provided for their adjudication, having all the power of this court (subject to appeal,) and more facilities for the trial of issues that may arise, this court has generally declined the investigation of such cases.—State v. Vail, 97.

OFFICERS, continued.

2. *Quo Warranto—Information—Public Officer—Commission from Governor, whether conclusive.*—A commission from the Governor is not a conclusive defense in an information in the nature of a *quo warranto*, for usurping a public office, whether the information be filed by the Attorney General or at the instance of a private party.—*Id.*

3. *Constitution, construction of—Supreme Court—Writs of Habeas Corpus, Quo Warranto, &c.—Bill of Rights—Informations for indictable offenses.*—The provision in the constitution authorizing this court to issue writs of *habeas corpus*, *quo warranto*, &c., and to hear and determine the same, necessarily assumes, that writs and informations are not criminal informations in the sense of the 11th section of the Bill of Rights, which prohibits criminal informations for indictable offenses.—*Id.*

4. *Constitution, construction of—Bill of Rights—Trial by jury—Habeas corpus—Quo Warranto—Certiorari.*—The 17th section of the Bill of Rights, declaring the right of trial by jury inviolate, is manifestly applicable to criminal proceedings proper, and cannot be understood to require this court on *habeas corpus*, or *quo warranto*, or *certiorari*, to summon juries.—*Id.*

5. *Elections—Votes—Secretary of State—County Clerks—Commissions—Governor—Ministerial Acts.*—In opening and casting up the votes at an election, the County Clerk, or Secretary of State, has no discretion, and cannot determine upon the legality of the votes, and it is the duty of the Governor to issue the commission in accordance with the result so ascertained. All of these officers act ministerially and not judicially.—*Id.*

6. *Elections—Majority candidates—Disqualifications, not patent—Who elected.*—The candidate, who at an election receives the greatest number of votes except the successful candidate, is not entitled to the office, when the successful candidate is ineligible owing to personal disqualifications, and such as were not patent to the voters.—*Id.*

7. *Quo Warranto—Informations—Public Offices—Elections—Illegal Votes.*—Upon an information in the nature of a *quo warranto* for usurpation of an elective public office, qualifications of electors cannot be inquired into.—*Id.*

8. *Quo Warranto—Informations—Attorney General—Public Offices.*—Upon an information in the nature of a *quo warranto* filed by the Attorney General for usurpation of an elective public office, the qualifications of another party, not the incumbent, for the office cannot be inquired into.—*Id.*

9. *Quo Warranto—Informations—Who can file—What judgment for relator—Statute of Anne.*—Neither in this State, nor under the Statute of Anne, is the relator in an information in the nature of a *quo warranto* necessarily a claimant for the office, but he must have a special interest in the matter, which interest is a preliminary question for the determination of the court upon his application to file the information; and the court can give no judgment for the relator except so far as costs are concerned; and his title is not necessarily examined into, except so far as it may incidentally or indirectly affect the right of the defendant.—*Id.*

See Practice, civil—Pleading, 7.

ORDINANCES; See Crimes and punishments, 3; Municipal Corporations.

P.

PARTNERSHIP.

1. *Partners—Joint funds—Speculation by one.*—Generally one partner cannot speculate with the partnership funds for his individual benefit.—Brown v. Schackelford, Exr., 122.

2. *Partners—Joint funds—Speculation by one—Damages.*—A. B. & C. shipped goods jointly from America to D. in England to sell for them. A. on his private account drew a bill of exchange on D., but this action did not cause nor

PARTNERSHIP, continued.

affect the sale of the property: D. sold this bill of exchange, there being at the time a great difference in price between gold and U. S. Treasury notes. A. invested the money so realized, and lost by his investments. D. in settling with the partners, charged them interest for the money advanced to A. on account of the bill of exchange. *Held*, that this interest in gold was the amount due from A. to the other partners.—*Id.*

PAYMENT; See Bills and Notes, 3.

POWERS; See Conveyances, 5; Wills, 4, 5, 6.

PRACTICE, CIVIL.

1. *Judgment—Reinstatement of cause after lapse of term.*—After the term, at which final judgment in a cause is rendered, has elapsed, the court has no power to reinstate the cause upon the docket, or to take any further steps. And motions for new trial and in arrest, filed for the first time at the subsequent term, are *coram non judice*, and must be disregarded, notwithstanding such reinstatement. [W. S., 1059, §§ 6, 11.]—Danforth v. Lowe, 217.

See Notice, 1; Special Judges, 1, 2, 3.

PRACTICE, CIVIL—ACTIONS; See Attachment; Divorce; Mandamus; Quo Warranto; Railroads, 10; Replevin; Sheriff's Sales, 4.

PRACTICE, CIVIL—APPEAL.

1. *Practice, civil—Appeal—Transcript—Service—Jury waived.*—The objections, that the appellant was not served, and that a jury trial was not waived, cannot be sustained in this Court, when the transcript states to the contrary.—Jones v. Shaw, 68.
2. *Practice, civil—Error, writ of—Exceptions, bill of—Exceptions saved.*—On a writ of error, no exceptions being saved and no bill of exceptions filed, judgment will be affirmed.—Shields v. Shields, 136.
3. *Judgment, final—Appeal.*—A judgment for defendant, which is merely one for costs, is not a final one, and will not authorize an appeal.—Moran v. Plankinton, 243.
4. *Bill of exceptions—Motion in arrest, not reviewed without.*—In the absence of any bill of exceptions, the Supreme Court will not review the action of the trial court on motion in arrest. Such motion being no part of the record proper, can only be brought up by bill of exceptions.—Peacher, Adm'r, &c. v. Patrick, 251.

See Judgment, 1; Justices' Courts, 2, 3; Practice, civil—Trials, 2, 3; Practice, Supreme Court.

PRACTICE, CIVIL—NEW TRIAL.

1. *New trial—Newly discovered evidence must be not merely cumulative.*—To authorize a court to set aside a verdict on the ground of newly discovered evidence, it must be shown to be material and not merely cumulative, and it must appear that it could not have been obtained by reasonable diligence on the former trial.—Mills, Ex'r. v. Sampsel, 360.

PRACTICE, CIVIL—PARTIES.

1. *Practice, civil—Pleadings—Defect of parties.*—The objection of defect of parties can be raised only by demurrer or answer. (W. S., 1014, § 6; 1015, § 10.)—Reugger v. Lindenberger, 364

See Administration, 5.

PRACTICE, CIVIL—PLEADING.

1. *Practice, civil—Pleadings—Counts—Separate causes of action—Account.*—Several assessments on a stockholder of a company in payment of his subscription, after they all become due, are in the nature of an account made at several times, all of the items of which being added together make a single cause of action.—K. C. Hotel Co. v. Sigement, 176.
2. *Practice, civil—Motion in arrest—Errors in pleadings—Improper joinder—Supreme Court.*—The objection, that several causes of action are united in

PRACTICE, CIVIL—PLEADING, continued.

one count, will not be considered by the Supreme Court, unless that point was raised before the lower court in the motion in arrest.—*Id.*

3. *Practice, civil—Pleadings—Counter-claims.*—A. sued B. and C. on mechanic's lien for material furnished for B.'s house under a contract with C., the contractor for building. B. in his answer denied all knowledge of A.'s furnishing any materials, and denied that A. gave him any notice of his lien; then as a counter claim B. alleged, that A. guaranteed that C. should build the said house in a workman-like manner, and complete it by a certain date, and asserted that neither condition was fulfilled, and claimed damages for their breach. *Held*, that this defense was admissible in this suit as a counter-claim, and was not inconsistent with the prior defenses.

Law of counter-claim and set-off reviewed *in extenso*.—McAdow v. Ross, 199.

4. *Practice, civil—Demurrer as to cause of action must specify what.*—Where plaintiff states no cause of action whatever, a demurrer merely alleging that the petition "does not state facts sufficient to constitute a cause of action," without further specifying in what particulars the pleading is defective, is nevertheless a good demurrer. But where the petition states a cause of action, a demurrer, which goes to some minor, and not necessarily fatal, imperfections, must specifically state them.—Morgan v. Bouse, 219.

5. *Amending pleadings—What amendments do not change nature of claim or defense.*—In suit on a note, where the petition alleges that plaintiff is administrator of A., and that the note was executed by defendant to "A.," the pleading may under the Practice Act (W. S., 1035, §§ 3 and 7,) be amended by adding, that the note was transferred from "A" to "B;" that plaintiff sues as the administrator of B. Such amendment does not change the nature of the claim or defense.—Harkness, Adm'r. v. Julian, 238.

6. *Practice, civil—Pleadings—Abbreviations, use of—Money.*—The indication of Federal money by Arabic figures, preceded by the sign ($) to indicate dollars, and the cutting off of the last two figures by a dot to indicate cents, is permissible. (W. S., 420, § 15.) [Goodall vs. Harrison, 2 Mo., 153, overruled.] —Fulenwider v. Fulenwider, 439.

7. *Practice, civil—Pleadings—Necessary allegations—Replevin.*—In an action of replevin for the seal of the court, and a book called a "fee-book," the defendant answered, that he held these articles by virtue of a writ issued by the judge of that court, (W. S., 1136, § 5,) and copied the writ into the answer. *Held*, that the writ and its recitals constituted no defense, but the answer must allege affirmatively, the authority of the judge to issue the writ, that defendant was clerk of the court, and that the plaintiff had been removed from said office upon conviction of misdemeanor in office.—Flentge v. Priest, 540.

See Attachment, 2, 5; Husband and Wife, 5; Insurance, fire, 1; Jeofails; Judgment, 2; Landlord and Tenant, 3; Mechanics' Liens, 2; Practice, civil —Parties, 1.

PRACTICE, CIVIL—TRIALS.

1. *Practice, civil—Trials—Verdict, general—Several counts—Arrest of judgment —Reversal.*—Where there are several causes of action stated in a petition, and a general verdict is rendered on the whole petition in favor of the plaintiff, if the lower Court refuse to arrest the judgment, this Court will reverse it.—City of St. Louis v. Allen, 44.

2. *Practice, civil—Trials—Evidence, exclusion of—Injury—Reversal*—When the exclusion of evidence has not injured the appellant, it is no ground for the reversal of the judgment.—Harris v. Hays, 90.

3. *Practice, civil—Trials—Instructions—Theory of case.*—The refusal of an instruction, based on a different theory from that on which both parties tried the case, is no ground for a reversal.—*Id.*

4. *Wills—Devisavit vel non—Judgment.*—Upon an issue of *devisavit vel non* the final order of the court should establish or reject the will—*Id.*

PRACTICE, CIVIL—TRIALS, continued.

5. *Wills—Devisavit vel non—Burden of proof—Circuit Court.—Semble*, that the better practice is, to regard proceedings to establish a will, as proceedings *in rem*, and to require formal proof of the execution of the will from those propounding it, even though it has been already admitted to probate.—*Id.*

6. *Court sitting as a jury—Conflict of evidence—Instructions, etc.*—Where the court sits as a jury, and the evidence is conflicting, it errs in giving an instruction that upon the evidence plaintiff is entitled to recover.—DeGraw v. Prior, 313.

7. *Practice, civil—Evidence—Close of testimony—Subsequent proof.*—In suit by a bank, where through inadvertence proof of its incorporation was omitted, the court might in its discretion permit the proof to be made, although the plaintiff had announced the case as closed.—German Saving Bank v. Marks, 382.

8. *Practice, civil—Instructions in chancery proceedings.*—It is not error to refuse instructions in equitable proceedings in the nature of a bill in chancery.—Moore v. Wingate, 398.

9. *Practice, civil—Trials—Depositions—Informalities—Objection, when to be made.*—Objections to depositions on the ground of irregularities come too late at the trial. The proper way is to file a motion to suppress the depositions.—Delventhal v. Jones, 460.

10. *Practice, civil—Trials—Written instruments—Who interprets.*—It is the duty of the court to ascertain and interpret the meaning of written instruments as a matter of law, and the duty cannot be shifted to the jury in the shape of questions of fact.—State v. LeFaivre, 470.

11. *Practice, civil—Jury—Arguments before—Statements by counsel, etc.*—An advocate ought not to be allowed to make himself a witness and to state facts not in evidence touching the case under discussion. And it is the duty of the judge to check such statements.—Loyd v. Han. & St. Jo. R. R., 509.

12. *Practice, civil—New trial, motion for—Address to jury—Statements not in evidence made in, etc.*—Where the trial judge overruled a motion for new trial based upon the affidavit of a bystander, setting forth certain statements not in evidence made by counsel in addressing the jury, ordinarily the Supreme Court will not interfere. The court who heard the speech is the proper tribunal to judge of its character and effect on the jury.—*Id.*

13. *Practice, civil—Trials—Jurors, competency of—Challenge.*—Jurors were asked, "whether, if the evidence were evenly balanced between plaintiff, an individual, and defendant, a corporation, which way would you incline to find?" They answered, that they would incline to find for the plaintiff. They were then challenged for cause. The court then asked them, if they thought they could try the case fairly, and without prejudice or bias; to which they replied affirmatively. *Held*, that, taking both answers together, the jurors were not incompetent, that jurors are not to be expected to know the rules of law about the weight of evidence, until instructed thereupon by the court.—Hudson v. St. L., K. C. & N. R. R., 525.

14. *Practice, civil—Trials—Instructions—Questions of law.*—Instructions involving questions of law ought not to be given, unless other instructions are also given explaining those questions.—*Id.*

15. *Practice, civil—Trials—Corporations, suits against—Existence of, proof of—Justices' courts.*—It is not necessary, on a trial in the Circuit Court of a cause originally brought before a justice against a corporation, for the plaintiff to prove defendant's corporate existence, when defendant has appeared and defended as a corporation, has executed bonds filed in the cause authenticated by its corporate seal, and in every way, that it could be done, recognized its corporate existence, and tried and defended the case on the merits to final judgment in its corporate name.—*Id.*

16. *Practice, civil—Instructions—Gross negligence.*—An instruction declaring that a party was responsible only for gross negligence, without defining what was in law "gross negligence," is improper.—Wiser v. Chesley, 547.

17. *Practice, civil—Instructions, etc.*—Instructions, not predicated upon the issues tried, should not be given.—Gilchrist v. Donnell, 591.

See Jury, 2; Practice, civil—New trials; Special Judges; Verdict, 1

PRACTICE, CRIMINAL.

1. *Practice, criminal—Indictment—Grand Larceny—Allegations—Unknown owner.*—An indictment for grand larceny may charge that the property stolen belonged to a person unknown to the jurors.—State v. Casteel, 124.

2. *Practice, criminal—Indictment—Larceny—Strays—Posting.*—A stray may be the subject of larceny before it is posted.—*Id.*

3. *Practice, criminal—Statute, construction of—Indictment—Grand Larceny—Essential averments.*—In an indictment for grand larceny, at common law and under W. S., 456, § 25, the words "feloniously" and "stole" are essential averments.—*Id.*

4. *Practice, criminal—Statute, construction of—Indictment—Larceny—Averments.*—In an indictment for larceny of a stray under W. S., 461, § 46, it may not be necessary to use the word "steal," as it is not used in the description of the offense in the statute.—*Id.*

5. *Practice, criminal—Indictment—Murder in the first degree—Verdict for a lesser degree—New trial—Effect of.*—An indictment for murder in the first degree, followed by a verdict for a lesser degree, followed by the granting of a motion for a new trial, operates as an acquital to the defendant of the charge of murder in the first degree; yet he can be tried again, as well for the same offense, as for any of the minor offenses which are embraced in an indictment for murder in the first degree. [State v. Ross, 29 Mo., 39, affirmed.] The line of defense, which the prisoner may design to pursue at a subsequent trial, does not affect the question.—State v. Smith, 139.

6. *Statute, construction of—Bigamy—Apprehension—Indictment—Allegation—Jurisdiction.*—When a court acquires jurisdiction in an indictment for bigamy only by virtue of the arrest of the prisoner within the limits of its jurisdiction, [W. S. 499, § 4,] the indictment must allege the apprehension of the prisoner within the limits of said jurisdiction prior to the finding of the indictment.—State v. Griswold, 181.

7. *Criminal law—Failure to plead, fatal after verdict.*—Where, in a criminal proceeding no plea to the accusation is entered on behalf of the prisoner, such fact will prove fatal after verdict. The error cannot then be cured by entry of plea *nunc pro tunc.*—State v. Saunders, 234.

8. *Practice, criminal—Verdict set aside—Prisoner held over—Final judgment.*—The action of the court in setting aside the verdict of the jury in a criminal proceeding, where the prisoner is held for another trial, is not a final judgment from which appeal will lie.—State v. Brannon, 244.

9. *Practice, criminal—Evidence—Insanity—Burden of proof.*—The question of insanity is simply one of fact and to be proved like any other fact. The evidence to establish it should reasonably satisfy the minds of the jury that the accused was insane when the act was committed. The burden of proving insanity is on the defendant.—State v. Smith, 267.

10. *Evidence—Instructions as to particular facts.*—It is not the province of the Court to select certain facts shown by the evidence and tell the jury how much or what or whether any weight shall be attached to them.—*Id.*

11. *Criminal law—Complaint—Venue.*—In criminal proceedings for assault and battery, the complaint of the prosecutor filed with the justice is a part of the proceedings, and an averment therein, that the offense was committed in the county, sufficiently lays the venue.—State v. Foye, 336.

12. *Criminal law—Indictment for attempted rape—Challenge and list of jurors.*—In indictment for attempted rape, defendant is not entitled to a peremptory challenge of twelve jurors.—(W. S., 449–50, § 32; 1102, § 4.) Nor is he entitled to a list of the jurors forty-eight hours before trial. (W. S., 1102, § 8.)

13. *Practice, criminal—Exceptions not taken in progress of trial, effect of.*—Exceptions, taken in the progress of a trial, occupy the same footing and are governed by the same rules in criminal as in civil cases. And where exceptions are not saved to the rulings of the court, they will not afterward be noticed, though the trial be of a criminal nature.—*Id.*

PRACTICE, CRIMINAL, continued.

14. *New trial—Motion for—Cumulative evidence.*—The discovery of new evidence, which is merely cumulative, is no ground for a new trial.—*Id.*

15. *New trial—Motion for, should show what.*—In order to obtain a new trial on ground of newly discovered evidence, the applicant must show, 1st. That the evidence has come to his knowledge since the trial: 2nd—That it was not owing to want of due diligence that it did not come sooner: 3rd—That it is so material, that it would probably produce a different result if the new trial were granted: 4th—That it is not cumulative: 5th—The affidavit of the witness himself should be produced or his absence accounted for: 6th—It should appear that the object of the testimony is not merely to impeach the character or credit of a witness.—*Id.*

16. *Practice, criminal—Final judgment—Appeal.*—In criminal, as in civil cases, no appeal will lie without final judgment; as where on demurrer sustained, none was rendered.—State v. Mullix, 355.

17. *Practice, criminal—Indictment—Disturbing religious worship.*—An indictment for disturbing a congregation met for religious worship, etc., (W. S., 504, § 30) is not sustained by evidence of a disturbance in the church-yard after the congregation had been dismissed.—State v. Jones, 486.

See Crimes and Punishments.

PRACTICE, SUPREME COURT.

1. *Practice, civil—Supreme Court—Final judgment.*—A writ of error will be dismissed when there was no final judgment in the court below.—Shaw v. Dinwiddie, 132.

2. *Practice, civil—Motion in arrest—Errors in pleadings—Improper joinder—Supreme Court.*—The objection, that several causes of action are united in one count, will not be considered by this court, unless that point was raised before the lower court in the motion in arrest.—Kansas City Hotel Co. v. Sigement, 176.

3. *Practice, Supreme Court—Statement and brief.*—Where plaintiff in error fails to file a statement and brief, the writ will be dismissed.—Appleby v. McElhannon, 210.

4. *Appeal to Supreme Court, dismissed when.*—When appellant files no statement or brief, or assignment of errors, the appeal to the Supreme Court will be dismissed.—Kite v. Cox, 237.

5. *Practice, Supreme Court—Assignment of errors.*—Where appellant files no assignment of errors, the appeal will be dismissed.—State v. McCracken, 245.

6. *Practice, Supreme Court—Points not presented in motion for new trial, not examined afterward.*—Grounds of objection, not set forth in motion for new trial, will not be heard in the Supreme Court.—Carver v. Thornhill, 283.

7. *Practice, civil—Supreme Court—Evidence, re-examination of.*—Where there is any evidence to sustain a verdict, the testimony will not be weighed by the Supreme Court.—*Id.*

8. *Supreme Court—Evidence, weight of.*—In law cases, this court will not weigh the evidence.—H. & N. L. Plank R. Co. v. Bowling, 311.

9. *Practice civil—Exceptions not saved on trial below.*—Where exceptions are not saved at the time, the rulings of lower courts will not be reviewed above.—DeGraw v. Prior, 313.

10. *Practice, civil—Appeal—Final judment.*—Where, on appeal to the Supreme Court, the record shows a verdict for plaintiff and that the Court ordered judgment rendered accordingly, but no entry of the judgment appears in the record, the appeal will be dismissed.—Dale v. Copple, 321.

11. *Practice, civil—Supreme Court—Verdict.*—In law cases, where there is any legal evidence tending to uphold the finding, this court will not weigh the evidence.—Bush & Son v. Christian, 483.

PRE-EMPTION; See Land and Land Titles, 1, 2.

PRESUMPTIONS; See Bills and Notes, 3.

PRINCIPAL AND AGENT; See Agency.

PRINCIPAL AND SURETY.

1. *Principal and sureties—Prior suit against principal, when unnecessary.*—The condition of a bond was, that a holder should not prosecute the sureties till he had exhausted all legal remedies against the principal. *Held,* that where the principal was totally insolvent and nothing could be realized out of him on execution, it was unnecessary to bring suit against the principal before proceeding against the sureties.—Heralson v. Mason, 211.

PROCESS; See Service.

PUBLICATION; See Notice, 1.

Q.

QUO WARRANTO.

1. *Quo Warranto—Information—Attorney General—Private Person—Supreme Court—Jurisdiction.*—This court has jurisdiction of informations in the nature of *quo warranto*, whether filed by the Attorney General, or by a private person; though, where other tribunals have been provided for their adjudication, having all the power of this court (subject to appeal,) and more facilities for the trial of issues that may arise, this court has generally declined the investigation of such cases.—State v. Vail, 97.

2. *Quo Warranto—Information—Public Officer—Commission from Governor, whether conclusive.*—A commission from the Governor is not a conclusive defense in an information in the nature of a *quo warranto*, for usurping a public office, whether the information be filed by the Attorney General or at the instance of a private party.—*Id.*

3. *Constitution, construction of—Supreme Court—Writs of Habeas Corpus, Quo Warranto, &c.—Bill of Rights—Informations for indictable offenses.*—The provision in the constitution authorizing this court to issue writs of *habeas corpus*, *quo warranto*, &c., and to hear and determine the same, necessarily assumes, that writs and informations are not criminal informations in the sense of the 11th section of the Bill of Rights, which prohibits criminal informations for indictable offenses.—*Id.*

4. *Constitution, construction of—Bill of Rights—Trial by jury—Habeas corpus—Quo Warranto—Certiorari.*—The 17th section of the Bill of Rights, declaring the right of trial by jury inviolate, is manifestly applicable to criminal proceedings proper, and cannot be understood to require this court on *habeas corpus*, or *quo warranto*, or *certiorari*, to summon juries.—*Id.*

5. *Elections—Votes—Secretary of State—County Clerks—Commissions—Governor—Ministerial Acts.*—In opening and casting up the votes at an election, the County Clerk, or Secretary of State, has no discretion, and cannot determine upon the legality of the votes, and it is the duty of the Governor to issue the commission in accordance with the result so ascertained. All of these officers act ministerially and not judicially.—*Id.*

6. *Elections—Majority candidates—Disqualifications, not patent—Who elected.*—The candidate, who at an election receives the greatest number of votes except the successful candidate, is not entitled to the office, when the successful candidate is ineligible owing to personal disqualifications, and such as were not patent to the voters.—*Id.*

7. *Quo Warranto—Informations—Public Offices—Elections—Illegal Votes.*—Upon an information in the nature of a *quo warranto* for usurpation of an elective public office, qualifications of electors cannot be inquired into.—*Id.*

8. *Quo Warranto—Informations—Attorney General—Public Offices.*—Upon an information in the nature of a *quo warranto* filed by the Attorney General for usurpation of an elective public office, the qualifications of another party, not the incumbent, for the office cannot be inquired into.—*Id.*

QUO WARRANTO, continued.

9. *Quo Warranto—Informations—Who can file—What judgment for relator—Statute of Anne.*—Neither in this State, nor under the Statute of Anne, is the relator in an information in the nature of a *quo warranto* necessarily a claimant for the office, but he must have a special interest in the matter, which interest is a preliminary question for the determination of the court upon his application to file the information; and the court can give no judgment for the relator except so far as costs are concerned; and his title is not necessarily examined into, except so far as it may incidentally or indirectly affect the right of the defendant.—*Id.*

R.

RAILROADS.

1. *Revenue—Personal property—Where taxable—Railroads—Rolling stock.*—Personal property which is capable of having an actual *situs*, is taxable in the county where it is situated; but other personal property which has no *situs*, is taxable in the county where the owner resides. Rolling stock of a railroad company which is in a county, which is not the legal residence of the corporation, only in transit or temporarily, is not taxable in such county; but is to be assessed and taxed in the county which is the legal residence of such corporation.—Pacific R. R. v. Cass Co., 17.

2. *Municipal Corporations—Railroads, power to subscribe to*—It is too late now to question the power of municipal corporations to subscribe to railroad corporations.—O. V. & S. K. R. R. Co. v. County Court of Morgan County, 156.

3. *Railroads—Lands, condemnation of—Commissioners—Report, motion to set aside—Review.*—In proceedings to condemn lands for railroad purposes, the proceedings being regularly conducted, the opinion of the commissioners on the facts submitted to them, and also the propriety of the instructions or declarations of law asked on a motion to set aside the report of the commissioners, cannot be examined into, nor reviewed in this court.—Lee v. Tebo & Neosho R. R. Co., 178.

4. *Railroads—Lands, condemnation of—Commissioners, order of reference to—Review*—In proceedings to condemn lands for railroad purposes, the propriety of the order appointing the commissioners, which contained their instructions, is subject to examination by this court.—*Id.*

5. *Railroads—Lands, condemnation of—Benefits, what are.*—When lands are condemned for railroad purposes, the benefits to be assessed to the owner, with reference to the remainder of his land, are such as his land derives from the road over and above the benefits to his neighbors, whose land is not taken.—*Id.*

6. *Railroads—Iron Mt. R. R.—Sale of—Unpaid balance of purchase money—Construction of statute—State interest fund.*—The Cairo and Fulton R. R. and the St. Louis & Iron Mt. R. R., were sold by the State for $900,000. At the sale, $225,700 was paid, leaving a balance of $674,300 to be paid on time. By § 8 of the Act of March 17th, 1868, (Sess. Acts 1868, p. 95,) it was provided, that the unpaid balance of $664,300, "together with all interest that might accrue thereon," should be appropriated to building a branch road from Pilot Knob to the Arkansas State line. *Held*, that under this act, the road last named was entitled to an appropriation of $664,300, and not $674,300. And held further, that notwithstanding that act, under the act touching State Interest, etc., (W. S., 1280,) the road last named would have no claim to the interest on said unpaid balance which had been collected and applied by the State Treasurer to the State interest and sinking fund. Mandamus against the State to enforce the payment of the $10,000, or the amount of the interest paid over, would not lie.—St. L. & I. M. R. R. v. Clark, 214.

7. *Railroads—Seat in car—Ticket—Surrender of.*—A passenger on a railroad train, who exhibits his ticket and demands a seat, need not surrender the ticket till the seat is furnished.—Davis v. K. C., St. J. and Council Bluffs R. R. Co., 317.

RAILROADS, continued.

8. *Damages—Railroad passenger ticket—Refusal to surrender—Expulsion from train—Failure to furnish seat, etc.*—A. buys a ticket from Winthrop to Bigelow on the K. C. & St. J. R. R. The cars are crowded. He refused to surrender his ticket till provided with a seat, and is ordered to leave the train when it shall arrive at Forest City. At this point he procures a seat, and subsequently tenders his fare from thence to Bigelow; but refuses to pay fare from Winthrop, or to give up his ticket. Thereupon the conductor declines the amount offered, and not receiving his ticket, ejects him from the train.

In an action for damages by A., based on the original contract for transportation entered into at Winthrop, *held*, that under the contract, A. would not be entitled to ride from Forest City to Bigelow without surrendering his ticket, or tendering his full fare from Winthrop, and could not maintain his action; although the case might be different, where plaintiff set up a new contract entered into at Forest City, and based his action thereon.—*Id.*

9. *Justices' courts—Cattle, damages to, by railroads—Jurisdiction.*—Justices of the peace have jurisdiction over suits against railroads for killing, maiming, &c., cattle, &c. in their respective townships, without regard to the value of the animals, or the amount of damages claimed. (W. S., 808, § 3.)—Hudson v. St. L., K. C. & N. R. R., 525.

10. *Railroads—Suits against, how brought—Injuries to individuals—Statutes, construction of.*—The statute concerning suits against railroads, providing that the penalties therein mentioned shall be sued for in the name of the State (W. S. 309, § 36; 310, 311, §§ 38, 42, 43,) so far as the rights of individuals to recover for damages received are concerned, is a remedial and not a penal statute, and, at most, only can be construed to give an additional method of prosecuting such suits —*Id.*

11. *Railroads—Summons—Service on depot-agent.*—A summons against a railroad is properly served on its depot-agent by the constable.—*Id.*

See Damages, 7; Mechanics' Liens, 1; Revenue, 2.

RAPE; See Crimes and Punishments, 1; Practice, criminal, 12.

RECORDS.

1. *Courts, Circuit, records of—Verity of, assailed collaterally.*—The verity of the records of the Circuit Courts cannot be impeached collaterally.—Freeman v. Thompson, 183.

RECOUPMENT; See Forcible Entry and Detainer, 4.

RENT; See Landlord and Tenant.

REPEAL; See Statute, construction of, 1, 6.

REPLEVIN.

1. *Replevin, action of, between joint owners.*—Replevin will not lie in behalf of one against another of two joint owners of personal property.—Cross v. Hulett, 397.

2. *Replevin—Indemnity bond—Officers, liability of—Statute, construction of.*—The taking of an indemnity bond from the plaintiff by an officer, who has seized property under an execution, does not release the officer, nor the plaintiff ordering or assenting to such action, from liability to a replevin suit by the owner of the property.—Belkin v. Hill, 492.

See Practice, civil—Pleading, 7.

REVENUE.

1. *Revenue—Taxation—Exemption from—Presumptions.*—Where exemption from taxation is claimed under any law, it must not be from presumption. The abandonment of the sovereign right to exercise this vital power can never be presumed; the intention to abandon it must appear in the most clear and unequivocal terms.—Pacific R. R. Co. v. Cass Co., 17.

2. *Revenue—Assessment—Board of Equalization—Notice.*—The Assessor of Cass County for 1869 made no assessment of the property of the Pacific Railroad, and his assessment book, when returned, contained no entry in relation to

REVENUE, continued.

said road. Subsequently, the County Board of Equalization verbally ordered an entry to be made on the assessor's book of an assessment by themselves of taxes against said road for said year, 1869. This order and entry were made without notice to the railroad. No taxes were charged against the railroad on the tax-book for 1869, or on the delinquent book for that year, until Dec., 1871, when an entry was made by order of the County Court of that date, without notice to the company, ordering that the assessment made by the Board of Equalization, and the taxes thereon, be placed on the copy made by the clerk for the use of the collector, and that the clerk make out a copy for the use of the collector. *Held*, that such assessment was clearly without authority of law and void. 1st. Because no notice was given as required by the act of 1868. 2nd. Because the Board had no authority to make an assessment. It had power to increase or diminish the valuation made by the assessor, but had no power to make an assessment of its own.—*Id.*

3. *Revenue—Personal property—Where taxable—Railroads—Rolling stock.*—Personal property, which is capable of having an actual *situs*, is taxable in the county where it is situated; but other personal property, which has no *situs*, is taxable in the county where the owner resides. Rolling stock of a railroad company, which is in a county which is not the legal residence of the corporation, only in transit or temporarily, is not taxable in such county; but it is to be assessed and taxed in the county which is the legal residence of such corporation.—*Id.*

4. *Municipal corporations—Special taxes—Streets—Re-paving—Assessment of benefits.*—The power to grade and improve streets is a legislative power, and is a continuing one, unless there is some special restraint imposed in the charter of the corporation. It may be exercised from time to time, as the wants of the municipal corporation may require, and of the necessity or expediency of its exercise the governing body of the corporation, and not the courts, is the judge; and it follows that the power to compel the property owners to pave generally, extends to compelling them to repave when required by the municipal authorities. If the first paving of a street is a special benefit to the front proprietor justifying the imposition on him of a portion of the expense, so the removal of an insufficient pavement, and the making of a new and sufficient one in its stead, is a matter of special benefit to the front proprietor, although it may be also of general utility.—McCormack v. Patchin, 33.

S.

ST. LOUIS, CITY OF; See Crimes and Punishments, 2, 3; Municipal Corporations, 3.

SALES; See Sheriffs' Sales; Trusts and Trustees, 2; Vendor's Lien.

SCHOOLS AND SCHOOL LANDS.

1. *Statute, construction of—School districts—Towns—Territory outside of corporate limits attached.*—Territory outside of town limits may be taken in and attached for school purposes. (W. S., 1262, § 1.)—State, *ex rel.* Nesbitt v. Board of Education of Appleton City, 127.

2. *Schools—Township boards—Contracts—Suits by teachers for salary—Statutes, construction of.*—A suit could be brought against a Township Board of Education by a teacher employed by the local directors for his salary, under the Statutes of 1865, (Chap. 46.)—Puterbaugh v. Township Board of Education, 472.

SEAL; See Conveyances, 7.

SEPARATE ESTATE; See Husband and Wife.

SERVICE; See Notice, 1; Railroads, 11.

SHERIFF; See Statute, construction of, 9.

SHERIFFS' SALES.

1. *Statute, construction of—Executions, statute on—Sheriff's sales—Essential recitals.*—The names of the parties to the execution, the date when issued, the date of the judgment, the description of the property, and the time, place and manner of sale, are essential recitals in a sheriff's deed, for property sold on execution (W. S., 612, § 54); all the other provisions relative to the recitals therein, may be regarded as simply directory.—Wilhite v. Wilhite, 71.

2. *Sheriffs' deeds—Acknowledgment, certificate of—Extrinsic evidence.*—The certificate of acknowledgment by a sheriff to a deed must be within and of itself complete, and no extrinsic evidence can be invoked to eke out its recitals. [Samuels v. Shelton, 48 Mo., 444.]—McClure v. McClurg, 173.

3. *Sheriff—Deeds—Acknowledgment—Open court—Informality.*—An acknowledgment of a deed by a sheriff, certified to by the clerk of court and stated by him to be entered of record in the records of said court, is not invalidated because stated to be taken before the judge. It is evident that the clerk used the words "Judge of the court" as synonymous with "court," and it may be regarded as a mere informality.—*Id.*

4. *Sheriff's sale—Substitution of purchaser instead of the original vendee—Mistake as to title—Action for money paid.*—Where a third party refunds to the purchaser at an execution sale the amount of his bid, and is substituted in his stead as purchaser, but it afterward transpires, that, contrary to the understanding of both parties, the land is that to which defendant in the execution had no title, the substituted purchaser will have no action against the original vendee for the amount of the purchase money paid over.—Cravens v. Gordon, 287.

5. *Sheriff's deed—Vagueness of description—Parol testimony to identify, when admissible.*—It may be considered as now settled in this State, that parol evidence is admissible to identify land vaguely described in a sheriff's deed; and it is proper to show, that the tract was well known by the description given; provided, that the description was sufficient to prevent persons from being misled as to the identity of the land, and to prevent a sacrifice of it at the sale. —McPike v. Allman, 551.

6. *Sheriff's deed—Vagueness of description in—Parol evidence.*—In ejectment, plaintiff claimed under a sheriff's deed, which described the land as "eighty acres, part of the west half of section thirty-one, township fifty-three, range five," and recited that the sale was made by virtue of an execution against John B. Crow. Parol evidence was introduced, which showed that the tract was not known in the community by the description of "eighty acres part of the west half," etc.; but that it was known as the land of Crow; that the land and the surrounding land was prairie; that Crow owned no other land in the immediate neighborhood; that it was generally known, that he had sold the north 120 acres of the section, and owned no land in the half section but eighty-three acres on the south end.

Held, that the sheriff's deed was not void by reason of its vagueness, and that the sale passed the title.—*Id.*

See Land and Land Titles, 2; Mortgages and Deeds of Trust, 9.

SPECIAL JUDGES.

1. *Statutes, constitutionality of—Special Judge.*—The Act [Sess. Acts 1870, p. 200, § 15,] authorizing the appointment of a special judge to try a cause, when an application has been made for a change of venue on account of the prejudice, &c., of the judge of the court, is valid. [Harper v. Jacobs, 51 Mo., 296, affirmed.]—Smith v. Haworth, 88.

2. *Statutes, construction of—Special laws—Departures from general rules.*—Special laws,, that give origin to new and unexpected departures from general rules, should be closely scrutinized, and the powers therein conferred strictly construed.—*Id.*

3. *Courts—Special judges—Transcript.*—When a cause is tried by a special judge, appointed for that purpose, the transcript should show that the order of appointment was entered of record.—*Id.*

SPECIAL TAXES; See Revenue, 4.

SPRINGFIELD, CITY OF.

1. *Land Commissioner—Condemnation of land—Assessment of damages—Separate action for.*—The verdict of a Land Commissioner's jury, awarding damages to the owner of land condemned for public use, is not exclusive of other remedies, where the charter provides no method of coercing payment from the city of the sum awarded. In such case the land owner may, notwithstanding such verdict, bring his independent action against the city for the assessment and recovery of damages.—Jamison v. City of Springfield, 224.

2. *Land Commissioner—Attempt to agree as to compensation—Assessment of damages to each property holder.*—Where a City Charter provides, that in condemning private property for public use, "if the amount of the compensation cannot be agreed upon, the Mayor shall cause the same to be assessed by a jury," etc., but the record of the proceedings before the Land Commissioner shows no attempt on the part of the city to agree with the land owner as to such compensation; and where the record shows that the Mayor impaneled the jury "to assess the damages to each and every property holder;" but further recites, that the jury simply stated in their finding, "that no private property holder sustained any damage," etc. *Held*, that such proceedings are wholly insufficient to divest the land owner of his title to the property (See Anderson v. City of St. Louis, 47 Mo., 479; Leslie v. City of St. Louis, etc., *Id.*, 474.)—*Id.*

3. *Land, condemnation of—Claim for damages caused by bringing street near door of plaintiff, etc.*—In suit against a city corporation for damages caused by the condemnation of a part of his lot of ground, he cannot claim compensation for "the damage and inconvenience caused plaintiff by bringing the street near his door." The measure of damages in such a case is the fair and reasonable value of the land taken.—*Id.*

STATUTE, CONSTRUCTION OF.

1. *Statute, construction of—Repeal—Later general affirmative statute does not repeal former which is particular, except when.*—A statute can only be repealed by express provision of a subsequent law, or by necessary implication. To repeal a statute by implication there must be such a positive repugnancy between the new law and the old, that they cannot stand together or be consistently reconciled. There should be a manifest and total repugnancy in the provisions of the new law, to lead to the conclusion that the later law abrogated, or was designed to abrogate, the former. A later statute, which is general and affirmative, does not abrogate a former one which is particular, unless negative words are used, or unless the acts are irreconcilably inconsistent.—Pacific R. R. v. Cass Co., 17.

2. *Statute, construction of—Executions, statute on—Sheriffs' sales—Essential recitals.*—The names of the parties to the execution, the date when issued, the date of the judgment, the description of the property, and the time, place, and manner of sale, are essential recitals in a sheriff's deed, for property sold on execution (W. S., 612, § 54); all the other provisions relative to the recitals therein may be regarded as simply directory. [Not in harmony with Crittenden v. Leitensdorfer, 35 Mo., 239.]—Wilhite v. Wilhite, 71.

3. *Statutes, constitutionality of—Special Judge.*—The Act [Sess. Acts 1870, p. 200, § 15,] authorizing the appointment of a special judge to try a cause, when an application has been made for a change of venue on account of the prejudice, &c. of the judge of the court, is valid. [Harper v. Jacobs, 51 Mo., 296, affirmed.]—Smith v. Haworth, 88.

4. *Statutes, construction of—Special Laws—Departures from general rules.*—Special laws, that give origin to new and unexpected departures from general rules, should be closely scrutinized, and the powers therein conferred strictly construed.—*Id.*

5. *Statutes, construction of—Organization of counties into municipal townships—Acts of March 18, 1872, and March 24, 1873.*—The act of March 24, 1873, was not designed to interrupt the continuity of the act of March 24, 1872, so as to avoid or annul proceedings under it. The act of 1873 must be construed

STATUTE, CONSTRUCTION OF, continued.

as a continuation of the act of 1872, both relating to the organization of counties into municipal corporations, the former being designed to correct supposed defects in the latter.—State v. County Court of Vernon County, 128.

6. *Statutes, construction of—Repeal—Acts done under.*—Acts done under a law are not rendered nugatory by the repeal of that law. [W. S., 895, § 5.]—*Id.*

7. *Statutes, construction of—Laws inconsistent—Repeal of.*—The general rule is *leges posteriores priores contrarias abrogant*, but it has limitations.—*Id.*

8. *Statutes, construction of—General and particular statutes, prior and subsequent.*—A subsequent, general and affirmative act does not abrogate a prior one, which is particular, unless negative words are used, or unless the two acts are irreconcilably inconsistent; but a subsequent act, special in its character, conferring a direct grant of power, must prevail over a prior act refusing such power.—St. Louis v. The Life Ass. of America, 466.

9. *Statutes, construction of—Records obtained by warrant—Constitutionality.*—The statute, (W. S., 1136, § 5,) authorizing a judge of the Supreme or Circuit Court to issue his warrant to a sheriff, commanding him to seize the books, &c., belonging to an office, detained by the former incumbent thereof, and deliver them to the proper officer, is not unconstitutional. It merely places the property in the custody of the law. It determines no right to the property, and leaves to claimants their legal remedies for the recovery of the same.—Flentge v. Priest, 540.

STATUTES, CONSTRUED.

ADMINISTRATION, 2, (W. S. 98, §§ 35, 37,) 3, (W. S. 887, § 6,) 5, (Sess. Acts 1865, 85).
ATTACHMENTS, 4, (W. S. 188, § 24).
BILLS AND NOTES, 5, (W. S. 813–14, §§ 9, 10,) 6, (W. S. 216, § 15; 217, § 18).
COSTS, 1, (W. S. 343, § 6).
COURT, CAPE GIRARDEAU COMMON PLEAS, 1, 2, (Sess. Acts 1853, 81).
COURT, KANSAS CITY COMMON PLEAS, 1, (Sess. Acts 1859, §10).
DIVORCE, 1, (W. S. 535, § 10).
ELECTIONS, 1, (W. S. 566–67).
EXECUTIONS, 2, (R. C. 1855, 741, § 20; *Id.* 905, § 18).
FRAUDS, STATUTE OF, 1, (W. S. 657, § 6).
GUARDIAN AND WARD, 1, (R. C. 1855, 825, § 18; 119, § 36; 120, §§ 39, 40, 41).
HUSBAND AND WIFE, 6. (W. S. 1372, §§ 1, 5).
INSURANCE, FIRE, 1, (W. S. 769, §§ 23, 43).
LIMITATIONS, 3, (W. S. 919, § 36).
MECHANICS' LIENS, 2, (W. S. 909, § 5;) 3, (W. S. 907, § 1).
PRACTICE, CIVIL, 1, (W. S. 1059, §§ 6, 11).
PRACTICE, CIVIL—PARTIES, 1, (W. S. 1014, § 6; 1015, § 10).
PRACTICE, CIVIL—PLEADING, 5, (W. S. 1035, §§ 3, 7;) 6, (W. S. 420, § 15;) 7, (W. S. 1136, § 5).
PRACTICE, CRIMINAL, 3, (W. S. 436, § 25;) 3, (W. S. 461, § 46;) 6, (W. S. 499, § 4;) 12, (W. S. 449–50, § 32; 1402, §§ 4, 8;) 17 (W. S. 504, § 30).
RAILROADS, 6; 9, (W. S. 808, § 3;) 10, (W. S. 304, § 36; 310, 311, §§ 38, 42, 43).
SCHOOLS AND SCHOOL LANDS, 1, (W. S. 1262, § 1).
SWAMP LANDS.
WITNESSES, 3, (W. S. 1373, § 5).

STREETS; See Damages, 2, 3, 4, 5, 6; Municipal Corporations, 6, 7; Revenue, 4; Springfield, City of, 1, 2, 3.

SUBSCRIPTION; See Contracts, 1.

SURETIES; See Attachment, 3; Bills and Notes, 2, 7, 8; Guardian and Ward, 1; Justices' Courts, 3; Principal and Surety.

SWAMP LANDS.

1. *Swamp lands—Patent—Act Sept. 28th, 1850—Effect of—Secretary of the Interior—Parol evidence identifying land.*—The Act of Congress of September 28th 1850, to enable the State of Arkansas and other States to reclaim the swamp lands within their limits (9 U. S. Stat., 519,) constituted a present grant, vesting an absolute title *proprio vigore* in the State of Missouri to such lands within her limits without issue of patent. The failure of the Secretary of the Interior to afterward perform his duty, in making out the lists and plats of the lands, and transmitting them to the governor, did not in any wise interfere with, or impair, the title. And in ejectment for such land, parol evidence is admissible for the purpose of identifying the same, as, in fact, swamp and over flowed land.—Clarkson v. Buchanan, 563.

2. *Swamp lands—List of, in office of Register of lands—Effect of, as evidence.*—A list of the swamp lands, certified from the office of the Register of is presumptive evidence that the list is a legal and correct one.—*Id.*

T.

TAXES; See Revenue; Trusts and Trustees, 2.

TOWNS; See Municipal Corporations.

TRANSCRIPT; See Practice, civil—Appeal, 1

TRESPASS; See Limitations, 2.

TRUSTS AND TRUSTEES.

1. *Trusts—Consent to appointment of trustees, not authorized by law—Sale of property—Estoppel.*—In case of refusal of a trustee, appointed under a deed of trust, to act in the premises, the court has no authority to appoint any person to carry out the trust except the sheriff of the county; but where all parties interested in the trust advised and consented to such appointment, and permitted such appointee to execute the trust and make *bona fide* sales of the estate; and it appears that the purchasers made permanent and valuable improvements on the property; and that the proceeds were applied to the satisfaction of the debts secured by the trust deed; they will be estopped in equity from disputing the authority of the trustee or the validity of the sales.—Hereford v. Nat. Bk. of Missouri, 330.

2. *Trustees' sales—Proceeds—Taxes—Prior incumbrances.*—Taxes due are a legal charge on lands, and ought to be paid before a sale under a deed of trust; but if this is not done, the trustee cannot apply the proceeds of the sale to the payment of the taxes, nor can he to the payment of a prior incumbrance, unless there was a special understanding or agreement, that, in order to make a clear title to the purchaser, the trustee should pay off the prior incumbrance.—Scott v. Shy, 478.

See Equity; Mortgages and Deeds of Trust.

V.

VENDOR'S LIEN.

1. *Vendor's lien—Enforcement of—Land of wife—Money paid husband.*—*Semble*, that the wife is not a necessary party to an action for the enforcement of the vendor's lien on land belonging to the wife, and in which the husband had a marital interest, when by the terms of the sale the purchase money was to be paid to the husband.—Reugger v. Lindenberger, 364.

VERDICT.

1. *Verdict—Penalties for failure to pay toll—General verdict of "not guilty"—Weight of evidence, etc.*—In an action to recover penalties for passing a toll-gate without paying toll and for tolls due the plaintiff, although the causes of action embraced in the suit were distinct and separate, and separately stated,

VERDICT, continued.

a general verdict, if the judgment is for the defendant, is sufficient; if the judgment were for the plaintiff, it might be necessary to render a separate verdict on each separate cause of action.—H. & N. L. Plank Road & Bridge Co. v. Bowling, 311.

See Jeofails, 1; Practice, civil—Trials, 1; Practice, criminal, 5, 8.

W.

WILLS.

1. *Wills—Devisavit vel non—Judgment.*—Upon an issue of *devisavit vel non* the final order of the court should establish or reject the will.—Harris v. Hays, 90.
2. *Wills—Devisavit vel non—Burden of proof—Circuit Court.*—*Semble,* that the better practice is, to regard proceedings to establish a will as proceedings *in rem,* and to require formal proof of the execution of the will from those propounding it, even though it has been already admitted to probate.—*Id.*
3. *Wills—Parties—Witnesses.*—Parties in interest are competent witnesses in proceedings to establish a will.—*Id.*
4. *Wills—Construction of—Powers.*—In the construction of wills, any words however informal, which clearly indicate an intention to give or reserve a power, are sufficient for the purpose.—Turner v. Timberlake, 371.
5. *Will—Construction of—Power of sale by widow.*—A will contained the following provisions: "It is my will that all my just debts be fully paid; and for that purpose, I desire my wife to sell of my lands the W. 1-2, S. W. 1-4," etc., "together with my black woman Hannah. I give and bequeath to my wife and my two children the remainder of all my estate and effects, after payment of my debts, to be disposed of in any manner that she may think best; so that the property or its effects may be appropriated to her use and benefit during her natural life; and at her death the remainder of the property, or its effects, may be appropriated to the use and benefit of my two children." *Held,* that under the will the wife was not limited to a life estate in the property, but that all of it might be sold before her death.—*Id.*
6. *Will—Life estate—Power contained in—Deed—Execution of power.*—Where by the provisions of a will a life estate in certain land was conferred upon the wife with power to alienate the same during her life, her deed of the land embodying a copy of the will, and alleging that the deed is executed "in consideration of the provisions of the will," sufficiently shows the intention of the grantor to execute the power contained in the will.—*Id.*

WITNESSES.

1. *Subpœnas—Service of, by parties—Costs not taxable for.*—Parties may serve subpœnas, but fees for such service cannot be recovered as costs.—H. & N. L. Plank R. Co. v. Bowling, 311.
2. *Evidence—Witness—Impeachment of—What foundation must be laid.*—To impeach a witness on the ground that he has made contradictory statements, his attention must be called to the time, place and circumstances, and the persons to whom the statements were made.—State v. Foye, 336.
3. *Administrator—Appraisement—Jurat, etc.*—An administrator's sale is not rendered void by reason of the fact that the person taking the affidavit of the appraisers subscribes himself as administrator.—Moore v. Wingate, 398.

See Evidence; Husband and Wife, 1, 6; Wills, 3.